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Taxation of Litigation Recoveries, 47 Am. Jur. Trials 591

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Employee's acquisition of employer's commodities at discount or without cost as within sales or gross income tax statute, 1 A.L.R.2d 1020

Nothing is taxable unless clearly within a taxing statute,[1] and precisely which income may be subjected to state taxation is a matter largely governed by the levying statute.[2] In order to be taxed for income, a taxpayer must have complete dominion over it.[3]

The word "income" in constitutional and statutory provisions relating to income tax is used in its ordinary meaning[4] and need not be money but may be that which is convertible into money.[5] Income, for the purposes of taxation, imports something entirely distinct from principal or capital[6] and is the gain derived from capital, from labor, or from both combined.[7] It represents a gain or profit that is generally understood to be a return on an investment of labor or capital, thereby increasing the recipient's wealth.[8]

"Taxable income" is the base figure upon which state income tax is computed.[9] Items considered as taxable income include unemployment compensation received by a taxpayer,[10] an award of alimony[11] or periodic alimony to a payee,[12] as well as embezzled funds.[13] The estimated rental of residence property occupied by the owner of such property may properly be taxed as income as part of the owner's income.[14] Government subsidies generally are not considered as generating taxable income to the recipient of the economic benefit.[15]

CUMULATIVE SUPPLEMENT

Cases:

Excess amount of state tax credit paid to taxpayers by state of New York as part of program that incentivized the rehabilitation certain areas by applying a percentage of a project's costs against income tax liability did not represent a nontaxable contribution to capital; there was no evidence that excess credit was payment to taxpayers for partnership interest in the rehabilitated property, nor was there federal law specifically allowing for such an exclusion from taxable gross income. 26 U.S.C.A. § 61(a); N.Y. Tax Law § 33. Ginsburg v. United States, 136 Fed. Cl. 1 (2018).

Phantom income is income resulting from a taxable event from which the taxpayer does not actually receive money. Marquis v. Marquis, 2020 WY 141, 476 P.3d 212 (Wyo. 2020).

[END OF SUPPLEMENT]

Footnotes

[1] In re Kroger Co., 270 Kan. 148, 12 P.3d 889 (2000), as corrected without opinion, (Dec. 21, 2000).

[2] Bremer v. Commissioner of Taxation, 246 Minn. 446, 75 N.W.2d 470 (1956); Whitney v. Wisconsin Dept. of Taxation, 16 Wis. 2d 274, 114 N.W.2d 445 (1962).

[3] Morville House, Inc. v. Commissioner of Corporations and Taxation, 369 Mass. 928, 344 N.E.2d 878 (1976).

[4] Trefry v. Putnam, 227 Mass. 522, 116 N.E. 904 (1917); State ex rel. Bundy v. Nygaard, 163 Wis. 307, 158 N.W. 87 (1916).

[5] State ex rel. Bolens v. Frear, 148 Wis. 456, 134 N.W. 673 (1912).

[6] Trefry v. Putnam, 227 Mass. 522, 116 N.E. 904 (1917).

[7] Weiss v. McFadden, 353 Ark. 868, 120 S.W.3d 545 (2003); Plasse v. Commissioner of Revenue Services, 49 Conn. Supp. 38, 858 A.2d 919 (Super. Ct. 2003), judgment aff'd, 85 Conn. App. 542, 858 A.2d 278 (2004); Hattiesburg Grocery Co. v. Robertson, 126 Miss. 34, 88 So. 4, 25 A.L.R. 748 (1921), error overruled, 126 Miss. 655, 89 So. 369 (1921); State ex rel. Bundy v. Nygaard, 163 Wis. 307, 158 N.W. 87 (1916).
The essence of income which is subject to taxation is the accrual of some gain, profit, or benefit to the taxpayer. In re Goodyear Tire & Rubber Co., Corporate Income Tax 1966, 1967, 1968, 133 Vt. 132, 335 A.2d 310 (1975).

[8] Byrd v. Hamer, 408 Ill. App. 3d 467, 347 Ill. Dec. 825, 943 N.E.2d 115 (2d Dist. 2011), appeal denied, 351 Ill. Dec. 1, 949 N.E.2d 1096 (Ill. 2011).
Income which is subject to taxation imports an actual gain and means an increase of wealth out of which money may be taken to satisfy the pecuniary imposition laid for the support of the government. Bill DeLuca Enterprises, Inc. v. Commissioner of Revenue, 431 Mass. 314, 727 N.E.2d 508 (2000).

[9] Getty Oil Co. v. Oklahoma Tax Commission, 1977 OK 19, 563 P.2d 627 (Okla. 1977).

[10] Combs v. Department of Revenue, 331 Or. 245, 14 P.3d 584 (2000).

[11] C.D.L. v. M.M.L., 72 Mass. App. Ct. 146, 889 N.E.2d 63 (2008).

[12] Rose v. Rose, 70 So. 3d 429 (Ala. Civ. App. 2011); In re Schaulin-Viviers, 37 A.3d 398 (N.H. 2012).

[13] People v. Hagen, 19 Cal. 4th 652, 80 Cal. Rptr. 2d 24, 967 P.2d 563 (1998).

[14] State ex rel. Bolens v. Frear, 148 Wis. 456, 134 N.W. 673 (1912).

[15] Morville House, Inc. v. Commissioner of Corporations and Taxation, 369 Mass. 928, 344 N.E.2d 878 (1976).

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West's Key Number Digest, Taxation 3446, 3447

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Construction and Application of Uniform Division of Income for Tax Purposes Act (UDITPA)—Availability of Relief from Standard Apportionment Formula and Other Issues, 81 A.L.R.6th 97

Forms

Am. Jur. Legal Forms 2d § 238:13

Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 179 to 189, 203, 210, 211, 215, 235, 236, 238

Law Reviews and Other Periodicals

Aikins, Common Control and the Delineation of the Taxable Entity, 121 Yale L.J. 624 (2011)

Anderson, Tennessee Department of Revenue: Losing Battles But Winning Wars, 46-FEB Tenn. B.J. 24 (2010)

Bennett, Substance Over Form: Refinement of the Unitary Business Doctrine in Meadwestvaco Corp. v. Ill. Dep't of Revenue, 553 U.S. 16 (2008), 34 S. Ill. U. L.J. 773 (Spring 2010)
Laskin, Only a Name? Trademark Royalties, Nexus, and Taxing That Which Enriches, 22 Akron Tax J. 1 (2007)
Mason, Common Markets, Common Tax Problems, 8 Fla. Tax Rev. 599 (2007)
Recent Case, Western State University Law Review Spring 2007 Year in Review Civil Microsoft v. Franchise Tax Board, 39 CAL. 4TH 750 (2006), 34 W. St. U. L. Rev. 268 (2007)
Simons, Fair Representation in the South Carolina Corporate Income Tax: Combined Reporting as Equitable Apportionment After Media General Communications v. South Carolina Department of Revenue, 62 S.C. L.Rev. 743 (2011)
Weldon, The Commonwealth Court of Pennsylvania's Influence on Corporate Tax, 21 Widener L.J. 229 (2011)

Some state income tax statutes incorporate the definition of "taxable income" stated in the Internal Revenue Code,[1] and when considering whether funds received by a taxpayer constitute state taxable income, courts apply pertinent administrative and judicial interpretations of federal income tax law.[2] It is common for state taxable income to be determined by starting with federal taxable income and adding or subtracting therefrom only pursuant to specific authorization of state law.[3] What constitutes income for state purposes changes as the federal standard evolves.[4]

The federal tax benefit rule is incorporated into the phrase "as determined for federal income tax purposes" contained in a state income tax chapter's definition of "adjusted gross income."[5]

CUMULATIVE SUPPLEMENT

Cases:

An individual taxpayer can receive a state tax benefit from a federal net operating loss if, and only to the extent that, the net operating loss resulted in a reduction in federal taxable income and state law plainly authorized such a reduction to be reflect in starting point for taxpayer's state return. 26 U.S.C.A. § 172; V.A.M.S. § 143.121. Eilian v. Director of Revenue, 402 S.W.3d 566 (Mo. 2013).

[END OF SUPPLEMENT]

Footnotes

1 Weed v. Commissioner of Revenue, 550 N.W.2d 285, 32 U.C.C. Rep. Serv. 2d 1147 (Minn. 1996); Combs v. Department of Revenue, 331 Or. 245, 14 P.3d 584 (2000); Knaggs v. Clark, 686 A.2d 466 (R.I. 1996); Krueger v. Wisconsin Dept. of Revenue, 124 Wis. 2d 453, 369 N.W.2d 691 (1985).

2 Combs v. Department of Revenue, 331 Or. 245, 14 P.3d 584 (2000).

3 Running v. Tax Com'r, 313 N.W.2d 772 (N.D. 1981).
Federal taxable income is the starting point when determining a corporation's state income tax liability. Hollinger Intern., Inc. v. Bower, 363 Ill. App. 3d 313, 299 Ill. Dec. 35, 841 N.E.2d 447 (1st Dist. 2005).

4 Krueger v. Wisconsin Dept. of Revenue, 124 Wis. 2d 453, 369 N.W.2d 691 (1985).

5 Berkley v. Gavin, 253 Conn. 761, 756 A.2d 248 (2000).

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§ 392. Accretions of value

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3446, 3451

The increase in the value of a capital investment, discernible only by estimation and not otherwise, does not constitute taxable income.[1] While income is the true increase in wealth acquired, the mere increment in the value of property is not regarded as income for tax purposes until the increase in value is actually realized by a sale of the property or by separating the increase from the property and converting it into something having an exchangeable value which the taxpayer can use for his or her own benefit and enjoyment.[2] Thus, a donation of stock made in good faith and in the absence of fraud does not subject the donor to income tax on the increase of value of the stock over its original cost to the donor.[3]

Accretions of value, as determined by a sale or conversion of property, are taxable income.[4] This principle is not limited to sales by dealers or traders, and the gain on an isolated sale or conversion of property by an investor, or one not a dealer or trader in such property, is taxable income.[5]

Footnotes

1 Bryant v. Commissioner of Corporations and Taxation, 291 Mass. 498, 197 N.E. 509, 102 A.L.R. 1 (1935).

2 Commissioner of Corporations and Taxation v. Williston, 315 Mass. 648, 54 N.E.2d 43, 151 A.L.R. 1395 (1944).

3 People ex rel. Wilson v. Wendell, 196 A.D. 596, 188 N.Y.S. 273 (3d Dep't 1921).

4 Fidelity & Columbia Trust Co. v. Reeves, 287 Ky. 522, 154 S.W.2d 337 (1941); Hutchins v. Commissioner of Corporations and Taxation, 272 Mass. 422, 172 N.E. 605, 71 A.L.R. 677 (1930); Bingham v. Long, 249 Mass. 79, 144 N.E. 77, 33 A.L.R. 809 (1924).

[5] Fidelity & Columbia Trust Co. v. Reeves, 287 Ky. 522, 154 S.W.2d 337 (1941); Trefry v. Putnam, 227 Mass. 522, 116 N.E. 904 (1917).

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§ 393. Discharge of indebtedness

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West's Key Number Digest

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Income tax: cancelation of debt upon payment of less than amount due, or purchase by debtor of own obligation at a discount, as creating taxable income, 7 A.L.R.2d 871

The discharge of an indebtedness is a taxable economic benefit to a taxpayer, the result to the taxpayer being the same as if the income was paid to him or her, and he or she expended it in payment of his or her indebtedness.[1] Likewise, the discharge of a debt of a taxpayer by a third party is income to the taxpayer where the debt was paid as a means of satisfying a further debt that the third party owed the taxpayer.[2]

The discharge of indebtedness does not constitute taxable income per se; rather, it is the income from discharge of the indebtedness that is included within taxable income.[3] When a taxpayer who has incurred a financial obligation is thereafter relieved of liability, in whole or in part, the taxpayer recognizes taxable income equal to the difference between the initial obligation and the amount, if any, paid to discharge that obligation.[4]

Observation:

The forgiveness of a debt by an officer-stockholder of a corporation, owed to him or her by the corporation, constitutes a contribution to the capital of the corporation and is not taxable income to the corporation.[5]

Footnotes

[1] Clarke v. State, 255 Ala. 431, 51 So. 2d 882 (1951); Title Ins. Co. v. State Bd. of Equalization, 4 Cal. 4th 715, 14 Cal. Rptr. 2d 822, 842 P.2d 121 (1992); Commissioner of Corporations and Taxation v. Williston, 315 Mass. 648, 54 N.E.2d 43, 151 A.L.R. 1395 (1944).
The discharge of a loan ordinarily will give rise to taxable income. J.H. McKnight Ranch, Inc. v. Franchise Tax Bd., 110 Cal. App. 4th 978, 2 Cal. Rptr. 3d 339 (1st Dist. 2003), as modified without opinion on denial of reh'g, (Aug. 19, 2003).

[2] Ralph L. Shirmeyer, Inc. v. Indiana Revenue Bd., 229 Ind. 586, 99 N.E.2d 847 (1951); Commissioner of Corporations and Taxation v. Thayer, 314 Mass. 375, 50 N.E.2d 11 (1943).

[3] Title Ins. Co. v. State Bd. of Equalization, 4 Cal. 4th 715, 14 Cal. Rptr. 2d 822, 842 P.2d 121 (1992).

[4] J.H. McKnight Ranch, Inc. v. Franchise Tax Bd., 110 Cal. App. 4th 978, 2 Cal. Rptr. 3d 339 (1st Dist. 2003), as modified without opinion on denial of reh'g, (Aug. 19, 2003).

[5] Foreman Mfg. Co. v. Johnson, 261 N.C. 504, 135 S.E.2d 205 (1964).

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§ 394. Purchase of corporate bonds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3446, 3451

A.L.R. Library

Income tax: cancelation of debt upon payment of less than amount due, or purchase by debtor of own obligation at a discount, as creating taxable income, 7 A.L.R.2d 871

Where a corporation purchases its own bonds at a price less than the issuing price or face value, the excess of the issuing price or face value over the purchase price is gain or income for the taxable year.[1]

Footnotes

[1] Lehigh Valley R. Co. v. Joseph, 281 A.D. 57, 117 N.Y.S.2d 170 (1st Dep't 1952), order aff'd, 305 N.Y. 853, 114 N.E.2d 209 (1953).

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§ 395. Amounts recovered on account of another's tort

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West's Key Number Digest

West's Key Number Digest, Taxation 3446, 3451

Trial Strategy

Taxation of Litigation Recoveries, 47 Am. Jur. Trials 591

An award of damages for personal injuries is not subject to state income taxation.[1] Compensatory damage awards are tax-exempt, and the exemption applies even though such damages often include compensation for the loss of past and estimated future earnings which would have been taxable had the plaintiff not been injured.[2] Wrongful death awards are also exempt from state income taxation.[3]

Footnotes

1 Henninger v. Southern Pac. Co., 250 Cal. App. 2d 872, 59 Cal. Rptr. 76 (1st Dist. 1967).
As to prejudgment interest on a personal injury judgment being excluded from state income taxation, generally, see § 400.

2 Klawonn v. Mitchell, 105 Ill. 2d 450, 86 Ill. Dec. 478, 475 N.E.2d 857 (1985).

3 Klawonn v. Mitchell, 105 Ill. 2d 450, 86 Ill. Dec. 478, 475 N.E.2d 857 (1985).

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§ 396. Income of Native Americans

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3412

Absent express authority conferred upon a state by an act of Congress, a State may not impose an income tax upon Native Americans living and working on their own tribal lands.[1] A State thus is without jurisdiction to subject a Native American who is living in Native American country and deriving income from reservation sources to a state income tax absent an express authorization from Congress.[2]

The federal preemption of the state taxation of income from a Native American reservation can be obviated by the absence of any one of three factors: the taxpayer's Native American descent, the taxpayer's residence on the reservation of the taxpayer's tribe, and the derivation of the income from reservation activities.[3] The income of a Native American residing on a reservation thus is subject to state income tax if he or she is employed off the reservation.[4] Furthermore, a State may tax the income of Native American tribal members who work for the tribe, but reside in the state outside Native American country[5] or off the reservation, provided that no federal law or treaty prohibits it.[6] Similarly, a Native American is not exempt from state income tax while living and working on the land of a tribe of which he or she is not a member,[7] and a State may subject to income taxation those distributions made to a Native American from gaming operations on the taxpayer's tribe's reservation, which were earned while the taxpayer resided on another tribe's reservation.[8] Income of Native American tribal members derived from working and living on private fee lands within reservation boundaries is akin to income derived outside the tribe's jurisdiction and is not exempt from state taxation.[9]

A State may tax the out-of-state pension income of members of a Native American band who reside on a reservation where the members of the band living on the reservation hold full state citizenship.[10] The imposition of income taxes on a state employee who is a member of a Native American tribe and who resides on a reservation, however, is preempted by federal law when the Native American is employed to provide care for Native Americans living on the reservation and when his or her employment activity depends entirely on Native Americans' needs for those services.[11]

Footnotes

[1] McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 93 S. Ct. 1257, 36 L. Ed. 2d 129 (1973); Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S. Ct. 1267, 36 L. Ed. 2d 114 (1973).
Absent congressional authorization, a State may not tax a Native American on a reservation for income earned exclusively on the reservation. Fond du Lac Band of Lake Superior Chippewa v. Frans, 649 F.3d 849 (8th Cir. 2011).

[2] Dark-Eyes v. Commissioner of Revenue Services, 276 Conn. 559, 887 A.2d 848 (2006).

[3] Mike v. Franchise Tax Bd., 182 Cal. App. 4th 817, 106 Cal. Rptr. 3d 139 (4th Dist. 2010).

[4] Powless v. State Tax Commission, 22 A.D.2d 746, 253 N.Y.S.2d 438 (3d Dep't 1964), order aff'd, 16 N.Y.2d 946, 264 N.Y.S.2d 929, 212 N.E.2d 445 (1965).

[5] Oklahoma Tax Com'n v. Chickasaw Nation, 515 U.S. 450, 115 S. Ct. 2214, 132 L. Ed. 2d 400 (1995).
A Native American may not move away from the lands reserved for the exclusive use of the tribe in which he or she is enrolled and into the general population while nevertheless retaining the tax exemption for income afforded to that Native American for income derived from reservation sources. Mike v. Franchise Tax Bd., 182 Cal. App. 4th 817, 106 Cal. Rptr. 3d 139 (4th Dist. 2010).

[6] State ex rel. Edmondson v. Native Wholesale Supply, 2010 OK 58, 237 P.3d 199 (Okla. 2010), cert. denied, 131 S. Ct. 2150, 179 L. Ed. 2d 935 (2011).

[7] LaRock v. Wisconsin Dept. of Revenue, 2001 WI 7, 241 Wis. 2d 87, 621 N.W.2d 907 (2001).

[8] Mike v. Franchise Tax Bd., 182 Cal. App. 4th 817, 106 Cal. Rptr. 3d 139 (4th Dist. 2010).

[9] Osage Nation v. Oklahoma ex rel. Oklahoma Tax Com'n, 597 F. Supp. 2d 1250 (N.D. Okla. 2009), judgment aff'd, 597 F.3d 1117 (10th Cir. 2010), cert. denied, 131 S. Ct. 3056, 180 L. Ed. 2d 902 (2011).

[10] Fond du Lac Band of Lake Superior Chippewa v. Frans, 649 F.3d 849 (8th Cir. 2011).

[11] Maryboy v. Utah State Tax Com'n, 904 P.2d 662 (Utah 1995).

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B. Compensation for Services

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West's Key Number Digest

West's Key Number Digest, Taxation 3411, 3455, 3456

A.L.R. Library

Tips as taxable income, 10 A.L.R.2d 191

Compensation received for personal services rendered in a State ordinarily is taxable income[1] regardless of the residency of the taxpayer.[2] Compensation, which is taxable income, includes such items as wages;[3] salaries,[4] including those salaries received by state officers and employees;[5] tips;[6] annual incentive payments;[7] and payouts for unused vacation time.[8] A payment received by a taxpayer prior to the expiration of a covenant not to compete may be taxable as compensation for that covenant.[9] Furthermore, the exercise of an employee stock option may, at the time of exercise, give rise to taxable income, measured by the difference between the option price and the market price on the date of exercise, but not where the right of the employee to sell the stock purchased is subject to severe restriction.[10]

CUMULATIVE SUPPLEMENT

Cases:

City ordinance defining "qualified wages" on which taxes would be imposed to include compensation attributable to nonqualified deferred compensation program, which included supplemental executive retirement plan (SERP) received by

married taxpayers upon husband's retirement as corporate executive, did not override exclusion of SERP from taxable income under conflicting ordinance excluding "pensions, disability benefits, annuities, or gratuities not in the nature of compensation for services rendered"; two ordinances were at odds, and more general definition of "qualifying wages" was limited by more specific provision excluding pensions from the broad definition. Ohio Rev. Code Ann. § 1.51. MacDonald v. Cleveland Income Tax Board of Review, 151 Ohio St. 3d 114, 2017-Ohio-7798, 86 N.E.3d 314 (2017).

[END OF SUPPLEMENT]

Footnotes

1 Graves v. People of State of New York ex rel. O'Keefe, 306 U.S. 466, 59 S. Ct. 595, 83 L. Ed. 927, 120 A.L.R. 1466 (1939).
A taxpayer's receipt of compensation income is subject to taxation under the state tax code. Roytburd v. Com., 958 A.2d 1064 (Pa. Commw. Ct. 2008), order aff'd, 601 Pa. 103, 971 A.2d 1125 (2009).

2 Molter v. Department of Treasury, 443 Mich. 537, 505 N.W.2d 244 (1993).
Compensation that nonresident taxpayers received under noncompete agreements were derived from employment in the state, and taxpayers were subject to state income tax on that compensation. Brown v. Director of Revenue, 12 S.W.3d 319 (Mo. 2000).

3 Cogan v. State, Dept. of Revenue, 657 P.2d 396 (Alaska 1983); Jibilian v. Franchise Tax Bd., 136 Cal. App. 4th 862, 39 Cal. Rptr. 3d 123 (2d Dist. 2006); Idaho State Tax Com'n v. Payton, 107 Idaho 258, 688 P.2d 1163 (1984); Lacey v. Indiana Dept. of State Revenue, 948 N.E.2d 878 (Ind. Tax Ct. 2011); Middlebrook v. Mississippi State Tax Commission, 387 So. 2d 726 (Miss. 1980); Holt v. New Mexico Dept. of Taxation & Revenue, 2002-NMSC-034, 133 N.M. 11, 59 P.3d 491 (2002); Buckley v. Wilkins, 105 Ohio St. 3d 350, 2005-Ohio-2166, 826 N.E.2d 811 (2005); Combs v. Department of Revenue, 331 Or. 245, 14 P.3d 584 (2000).

4 Buckley v. Wilkins, 105 Ohio St. 3d 350, 2005-Ohio-2166, 826 N.E.2d 811 (2005).

5 In re Breuer's Income Tax, 354 Mo. 578, 190 S.W.2d 248 (1945); In re Endemann's Estate, 282 A.D. 768, 122 N.Y.S.2d 682 (2d Dep't 1953), order modified on other grounds, 307 N.Y. 100, 120 N.E.2d 514 (1954).

6 Shanks v. Lowe, 364 Md. 538, 774 A.2d 411 (2001).

7 Clapes v. Tax Appeals Tribunal of the State of New York, 34 A.D.3d 1092, 825 N.Y.S.2d 168 (3d Dep't 2006).

8 Clapes v. Tax Appeals Tribunal of the State of New York, 34 A.D.3d 1092, 825 N.Y.S.2d 168 (3d Dep't 2006).

9 Schwartz v. Wisconsin Dept. of Revenue, 258 Wis. 2d 112, 2002 WI App 255, 653 N.W.2d 150 (Ct. App. 2002).

10 Marchlen v. Township of Mt. Lebanon, 560 Pa. 453, 746 A.2d 566 (2000); Uecke v. Wisconsin Dept. of Taxation, 36 Wis. 2d 530, 153 N.W.2d 614 (1967).

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Part Six. Income Taxes

XXII. Taxable Income

B. Compensation for Services

§ 398. Salaries of judges and other officers whose compensation cannot be diminished

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3411, 3455, 3456

Some authority holds that an income tax may be constitutionally imposed on the salaries of judges or other public officers who are within the protection of a constitutional provision that their compensation shall not be diminished during their continuance in office.[1] This view has been based on the ground that a constitutional provision against diminishing the compensation of public officers is not intended to be a limitation upon the taxing power,[2] and that, for example, with respect to the salaries of a deputy attorney general and an attorney general, neither the inclusion of such salaries in their taxable income nor their subsequent payment of the tax works a diminution of their salary within the meaning of such a provision.[3] This view is particularly applicable where a constitution has been subsequently amended by providing broadly that taxes may be imposed on incomes.[4] On the other hand, there is authority that holds that income tax cannot be imposed on the salaries of judges who are within the protection of a constitutional provision that their compensation shall not be diminished during their continuance in office.[5]

Even though the salaries of judges may be exempt from income tax under a constitutional provision against diminution thereof, the income derived by judges from other sources is taxable the same as that of other persons.[6]

Footnotes

1 Martin v. Wolfford, 269 Ky. 411, 107 S.W.2d 267 (1937); Taylor v. Gehner, 329 Mo. 511, 45 S.W.2d 59, 82 A.L.R. 986 (1931); Poorman v. State Board of Equalization, 99 Mont. 543, 45 P.2d 307 (1935).

2 Taylor v. Gehner, 329 Mo. 511, 45 S.W.2d 59, 82 A.L.R. 986 (1931).

3 Du Pont v. Green, 38 Del. 566, 195 A. 273, 114 A.L.R. 1184 (1937).

[4] State ex rel. Wickham v. Nygaard, 159 Wis. 396, 150 N.W. 513 (1915).

[5] Gordy v. Dennis, 176 Md. 106, 5 A.2d 69 (1939).

[6] Long v. Watts, 183 N.C. 99, 110 S.E. 765, 22 A.L.R. 277 (1922).

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Part Six. Income Taxes

XXII. Taxable Income

B. Compensation for Services

§ 399. Compensation paid by a government entity or on account of service in a government area

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3411, 3455, 3456

Pursuant to federal statute, states may tax the pay or compensation of a federal officer or employee if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation.[1] A State thus may levy a nondiscriminatory income tax on the salaries of officers and employees of the federal government or its instrumentalities without imposing an unconstitutional burden upon that government[2] where Congress has not conferred on such salaries an immunity from state taxation.[3] The question of whether a governmental unit's license fee fits within the allowance of an income tax is a question of federal law,[4] and it is the practical impact of the fee, not its name tag, upon which a determination is based.[5]

Federal statutory law further provides that no person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, by reason of his or her residing within a federal area or receiving income from transactions occurring or services performed within a federal area.[6] This statutory provision extends to state and local taxing authorities jurisdiction to levy taxes in a federal area within its borders as though the area was not a federal area.[7] It does not, however, limit a State's authority to impose limitations on local government's authority to levy and collect taxes.[8]

A State may have territorial jurisdiction to impose a tax on income earned by a nonresident within its borders although the income is derived from the performance of a contract with the federal government on land acquired by such government.[9] Furthermore, a city may constitutionally levy an income tax on compensation received by a nonresident of the city for work performed for the state on property owned by the State and located within the boundaries of the city.[10]

Cases:

For purposes of the federal statute in which the United States consents to state taxation of pay or compensation of federal employees as long as state tax does not discriminate on the basis of source of pay or compensation, if the state defines a favored class by reference to job responsibilities, a similarly situated federal worker will be one who performs comparable duties, but if the state defines the class by reference to some other criteria, the court's attention should naturally turn there. 4 U.S.C.A. § 111. Dawson v. Steager, 139 S. Ct. 698 (2019).

[END OF SUPPLEMENT]

Footnotes

1 4 U.S.C.A. § 111(a).

2 Western Ry. of Alabama v. State, 241 Ala. 440, 3 So. 2d 9 (1941); Gordy v. Prince, 175 Md. 688, 7 A.2d 611 (1939).

3 Graves v. People of State of New York ex rel. O'Keefe, 306 U.S. 466, 59 S. Ct. 595, 83 L. Ed. 927, 120 A.L.R. 1466 (1939).

4 Jefferson County, Ala. v. Acker, 527 U.S. 423, 119 S. Ct. 2069, 144 L. Ed. 2d 408 (1999).

5 Jefferson County, Ala. v. Acker, 527 U.S. 423, 119 S. Ct. 2069, 144 L. Ed. 2d 408 (1999).

6 4 U.S.C.A. § 106(a).

7 Riverside v. State, 190 Ohio App. 3d 765, 2010-Ohio-5868, 944 N.E.2d 281 (10th Dist. Franklin County 2010), appeal not allowed, 128 Ohio St. 3d 1447, 2011-Ohio-1618, 944 N.E.2d 696 (2011).

8 Riverside v. State, 190 Ohio App. 3d 765, 2010-Ohio-5868, 944 N.E.2d 281 (10th Dist. Franklin County 2010), appeal not allowed, 128 Ohio St. 3d 1447, 2011-Ohio-1618, 944 N.E.2d 696 (2011).

9 Atkinson v. State Tax Commission of Oregon, 303 U.S. 20, 58 S. Ct. 419, 82 L. Ed. 621 (1938); Silas Mason Co. v. Tax Com'n of State of Washington, 302 U.S. 186, 58 S. Ct. 233, 82 L. Ed. 187 (1937); James v. Dravo Contracting Co., 302 U.S. 134, 58 S. Ct. 208, 82 L. Ed. 155, 114 A.L.R. 318 (1937).

10 McConnell v. City of Columbus, 172 Ohio St. 95, 15 Ohio Op. 2d 168, 173 N.E.2d 760 (1961).

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C. Interest

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3410, 3462

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XXII. Taxable Income

C. Interest

§ 400. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3462

Interest received by the taxpayer is usually taxable income[1] unless it is excluded by law, such as prejudgment interest on a personal injury judgment.[2] The term "interest" is used in its usual sense, as denoting the compensation paid for the use of money, in statutory provisions describing taxable income.[3] To be allocable to the taxing state, interest income must be received or actually available to the taxpayer while a resident of the taxing state.[4]

Although there is contrary authority with respect to interest received from a state government on state tax refunds,[5] the interest subject to tax under a state statute taxing as income "interest from … money at interest" includes interest received from the United States on overpayments of federal income and estate taxes.[6]

Footnotes

1 Hale v. Iowa State Board of Assessment and Review, 302 U.S. 95, 58 S. Ct. 102, 82 L. Ed. 72 (1937).

2 Orillion v. Crawford, 964 So. 2d 950 (La. Ct. App. 1st Cir. 2006), amended on other grounds on reh'g in part by, 26 So. 3d 149 (La. Ct. App. 1st Cir. 2007).

3 Commissioner of Corporations and Taxation v. Williston, 315 Mass. 648, 54 N.E.2d 43, 151 A.L.R. 1395 (1944); Town & Country Dodge, Inc. v. Department of Treasury, 420 Mich. 226, 362 N.W.2d 618 (1984).
A nonresident taxpayer, who elects for federal and state income tax purposes to pay tax on an installment basis on a gain from the sale of real estate located in the taxing state, is subject to income tax on the interest earned on the installment obligation note. Horst v. Commissioner of Revenue, 389 Mass. 177, 449 N.E.2d 667 (Ct. App. 1983).

[4] Molter v. Department of Treasury, 443 Mich. 537, 505 N.W.2d 244 (1993).

[5] Wisconsin Dept. of Taxation v. Aluminum Goods Mfg. Co., 275 Wis. 389, 84 N.W.2d 67 (1957).

[6] Nichols v. Commissioner of Corporations and Taxation, 314 Mass. 285, 50 N.E.2d 76, 147 A.L.R. 830 (1943).

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XXII. Taxable Income

C. Interest

§ 401. Interest on obligations exempt from taxation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3462

A statute exempting a certain class of bonds or other obligations from taxation, in general terms, is ordinarily construed as not exempting the interest on such obligations from income tax, especially where no income tax was imposed when the statute was enacted.[1] When the exemption is so limited, neither a state net income tax[2] nor a state gross income tax,[3] as applied to the interest on such obligations, unconstitutionally impairs the obligation of the contract created by the exemption statute.

Footnotes

1 Hale v. Iowa State Board of Assessment and Review, 302 U.S. 95, 58 S. Ct. 102, 82 L. Ed. 72 (1937).

2 Hale v. Iowa State Board of Assessment and Review, 302 U.S. 95, 58 S. Ct. 102, 82 L. Ed. 72 (1937).

3 J. D. Adams Mfg. Co. v. Storen, 304 U.S. 307, 58 S. Ct. 913, 82 L. Ed. 1365, 117 A.L.R. 429 (1938).

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C. Interest

§ 402. Interest on government obligations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3410, 3462

In the absence of an express constitutional or statutory exemption,[1] a State may tax as income the interest paid on bonds issued by itself or its municipalities.[2] A State may exempt interest on bonds issued by it or its subdivisions from state income tax while taxing interest income on bonds from other states and their subdivisions.[3] A state income tax statute which subjects to tax income from federal securities but excludes income from state and municipal securities is unconstitutionally discriminatory.[4]

A federal statute provides that stocks and obligations of the federal government, as well as interest on such obligations, are exempt from taxation by a State or political subdivision of a State with the exception of nondiscriminatory franchise taxes on corporations and estate or inheritance taxes.[5] Interest on a federal obligation is considered in state taxation, for purposes of this federal statutory exemption from state taxation, when that interest is included in computing a taxpayer's net income or earnings for the purpose of an income tax or the like.[6] Mutual fund dividends which are directly attributable to income from United States treasury notes and bonds thus are exempt from state income taxation.[7] Interest income earned by mutual funds from repurchase agreements involving federal securities, however, is not interest on obligations of the United States government, for purposes of the federal statutory exemption from taxation by the states, but instead is interest on loans from mutual funds to a seller-borrower.[8] Furthermore, a State may tax interest income from securities issued by the Federal National Mortgage Association.[9]

Footnotes

[1] Ward v. Bailey, 198 Ark. 27, 127 S.W.2d 272 (1939); Preston v. Clements, 313 Ky. 479, 232 S.W.2d 85 (1950).

[2] J. D. Adams Mfg. Co. v. Storen, 304 U.S. 307, 58 S. Ct. 913, 82 L. Ed. 1365, 117 A.L.R. 429 (1938).

[3] Department of Revenue of Ky. v. Davis, 553 U.S. 328, 128 S. Ct. 1801, 170 L. Ed. 2d 685 (2008).

[4] Com. v. Koppers Co., 397 Pa. 523, 156 A.2d 328 (1959).

[5] 31 U.S.C.A. § 3124(a).

[6] Nebraska Dept. of Revenue v. Loewenstein, 513 U.S. 123, 115 S. Ct. 557, 130 L. Ed. 2d 470 (1994).

[7] Yurista v. Commissioner of Revenue, 460 N.W.2d 24 (Minn. 1990); Borg v. Department of Revenue, State of Or., 308 Or. 34, 774 P.2d 1099 (1989).

[8] Nebraska Dept. of Revenue v. Loewenstein, 513 U.S. 123, 115 S. Ct. 557, 130 L. Ed. 2d 470 (1994); Bewley v. Franchise Tax Bd., 9 Cal. 4th 526, 37 Cal. Rptr. 2d 298, 886 P.2d 1292 (1995); Everett v. State, Dept. of Revenue and Finance, 470 N.W.2d 13 (Iowa 1991); Borg v. Department of Revenue, State of Or., 308 Or. 34, 774 P.2d 1099 (1989).

[9] Matter of Protest of First Federal Sav. and Loan Ass'n of Claremore, 1987 OK 44, 743 P.2d 640 (Okla. 1987); First Tennessee Bank, N.A. Chattanooga v. Olsen, 736 S.W.2d 601 (Tenn. 1987); Shawnee Bank, Inc. v. Paige, 200 W. Va. 20, 488 S.E.2d 20 (1997).

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XXII. Taxable Income

D. Corporate Distributions

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West's Key Number Digest

West's Key Number Digest, Taxation 3458, 3461

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A.L.R. Index, Income Taxes
A.L.R. Index, Profits or Income
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D. Corporate Distributions

1. In General

§ 403. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3458, 3461

Ordinary dividends paid by corporations are usually taxable income to the stockholders who receive them.[1] The distribution of corporate profits to or among stockholders, by whatever form, however, does not relieve the corporation from income tax on what is so earned and distributed.[2] Under some income tax laws, ordinary dividends declared by a corporation are conclusively presumed, as against stockholders, to have been paid from earnings or profits.[3]

Footnotes

1 § 406.

2 Buick Motor Co. v. City of Milwaukee, Wis., 48 F.2d 801 (C.C.A. 7th Cir. 1931).

3 Van Dyke v. City of Milwaukee, 159 Wis. 460, 146 N.W. 812 (1914).

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D. Corporate Distributions

1. In General

§ 404. Sole owner of corporation as taxable for income resulting from corporate distribution

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3458, 3461

Under a statute including dividends in gross income, an individual who owns the entire common stock of a corporation is subject to income tax on a dividend of preferred stock issued by such corporation.[1] Checks drawn on a corporation's account and issued to the sole shareholder of a corporation will be taxed as income absent evidence that they served as repayment of loans to the corporation.[2]

Footnotes

1 Roper v. South Carolina Tax Commission, 231 S.C. 587, 99 S.E.2d 377 (1957).

2 Cardinale v. Chu, 111 A.D.2d 458, 488 N.Y.S.2d 325 (3d Dep't 1985).

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D. Corporate Distributions

1. In General

§ 405. Effect of rule allocating distributions as between life tenants and remaindermen

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3458, 3461

A rule adopted in a given jurisdiction as to the allocation of a particular type of corporate distribution between life tenants and remaindermen is not of controlling significance in determining what constitutes income for income tax purposes.[1] Thus, stock dividends are taxable under a state income tax statute although they are treated as capital rather than income as between life tenants and remaindermen.[2]

Footnotes

1 Follett v. Commissioner of Corporations and Taxation, 267 Mass. 115, 166 N.E. 575, 65 A.L.R. 143 (1929).
As to the apportionment of income between persons successively entitled, see Am. Jur. 2d, Life Tenants and Remaindermen §§ 134 to 139.

2 Trefry v. Putnam, 227 Mass. 522, 116 N.E. 904 (1917).

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D. Corporate Distributions

2. Particular Types of Distributions

a. In General

§ 406. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3458, 3461

Ordinary cash dividends are taxable income to the stockholders who receive them, and the same is true of extraordinary cash dividends declared by a corporation out of its surplus.[1] While to the extent that corporate distributions are made out of earnings or profits, they are dividends and are thereby included in gross income,[2] dividends declared and paid in the ordinary course of business by a going corporation after an income tax law is enacted may be taxed as income to the stockholders although they are paid from a surplus accumulated by the corporation before that time.[3] Moreover, although a mere increase in the value of capital assets is not income, the realization of the increase is income, and distribution of such assets to stockholders upon dissolution of the corporation is taxable as such.[4]

The entire distribution of cash and debentures by a corporation to its shareholders rather than only that portion of the distribution equal to the corporation's earned surplus at the time of the distribution is a taxable dividend under a state's income tax law where the corporation considers the distribution to be a dividend, the distribution is funded by a pledge of future earnings and the distribution is made possible by the appreciation and value of the corporation's assets.[5] The value of debentures distributed by a corporation are subject to state income tax as dividends at the time of distribution, rather than when they are paid, as debentures can be converted into cash immediately.[6]

Footnotes

1 Trefry v. Putnam, 227 Mass. 522, 116 N.E. 904 (1917).

[2] Marx v. Bragalini, 6 N.Y.2d 322, 189 N.Y.S.2d 846, 160 N.E.2d 611 (1959).

[3] Martin v. State Bd. of Assessment and Review, 225 Iowa 1319, 283 N.W. 418, 120 A.L.R. 1273 (1939); Trefry v. Putnam, 227 Mass. 522, 116 N.E. 904 (1917).

[4] Collins v. Kentucky Tax Commission, 261 S.W.2d 303 (Ky. 1953).

[5] Dobson v. Huddleston, 863 S.W.2d 392 (Tenn. 1993).

[6] Dobson v. Huddleston, 863 S.W.2d 392 (Tenn. 1993).

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XXII. Taxable Income

D. Corporate Distributions

2. Particular Types of Distributions

a. In General

§ 407. Distribution of dividend of subsidiary to parent corporation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3458

A.L.R. Library

Income of subsidiary as taxable to it or to parent corporation, 10 A.L.R.2d 576

Dividends derived from income within a state and on which payment of tax has been effected, and which have been paid by a domestic corporation to a foreign corporation owning all its stock, are not considered income of the latter under a state income tax statute defining income in such a manner that dividends on corporate stock owned by another corporation shall not be income of the corporation receiving such dividends where the corporation declaring the dividends has paid its tax to the State on the portion of its income subject to tax by the State.[1] A parent corporation can deduct a dividend that it receives from its wholly owned subsidiary from income tax even though the subsidiary does not pay income tax on the income that generated the dividend.[2] A corporate taxpayer which owns less than 80% of the stock of two foreign subsidiaries is entitled to exclude from net income 100% of the dividends received from those subsidiaries where the taxpayer owns 100% of the capital stock of a third foreign subsidiary which owns the remaining stock of the other two.[3]

Footnotes

1 Wood v. Deuser, 349 Mo. 1187, 164 S.W.2d 303 (1942).

2 H Enterprises Intern., Inc. v. C.I.R., 183 F.3d 907 (8th Cir. 1999); Ex parte Sonat, Inc., 752 So. 2d 1211 (Ala. 1999).

3 International Flavors & Fragrances, Inc. v. Director, Div. of Taxation, Dept. of Treasury, 102 N.J. 210, 507 A.2d 700 (1986).

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D. Corporate Distributions

2. Particular Types of Distributions

a. In General

§ 408. Corporate earnings returned to stockholding customers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3458

A corporation which sells its products to its stockholders at its actual cost of production is subject to income tax on the difference between the cost and the actual market price of the products.[1] Similarly, a farm co-operative association which buys and sells, both to its stockholders and other patrons, machinery, equipment, and supplies, and which, at the close of its fiscal year, issues to its shareholders and patrons shares of common stock in quantities measured by the relationship of the association's profit and the amount of purchases that each buyer makes, is liable for income tax on the profit.[2]

Footnotes

1 Cliffs Chemical Co. v. Wisconsin Tax Commission, 193 Wis. 295, 214 N.W. 447 (1927).

2 Storen v. Jasper County Farm Bureau Co-op. Ass'n, 103 Ind. App. 77, 2 N.E.2d 432 (1936).

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Part Six. Income Taxes

XXII. Taxable Income

D. Corporate Distributions

2. Particular Types of Distributions

b. Dividends in Kind

§ 409. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3458, 3461

A.L.R. Library

Income tax consequences to shareholder of dividend in kind, 56 A.L.R.2d 474

If a distribution constitutes a dividend, the fact that it is a dividend in kind rather than in cash does not alter its character for income tax purposes.[1] In fact, while there is authority to the contrary,[2] a dividend in kind may be taxable even under statutes taxing cash dividends.[3] While the fact that a distribution is designated a dividend may be important in establishing that it is such,[4] a dividend in kind may exist even though there is no express or formal declaration of a dividend.[5] Under some state statutes, what is taxable as a dividend is a distribution of surplus assets,[6] accumulated surplus or profits,[7] earned surplus,[8] or earnings or surplus.[9] When, under a state statute, a distribution of accumulated earnings or profits is taxable, a distribution of capital is not subject to tax.[10]

In order to constitute a distribution of property by a corporation, the property transferred must cease to be a part of the corporate property in which the stockholders had an indirect and undivided interest and instead become their separate and independent holding which they can dispose of at will.[11] When property is distributed in kind by a corporation to its shareholders, income thereafter accruing from the sale of the property is not taxable to the corporation.[12] Receipt by an agent of a dividend consisting of stock in another corporation is the equivalent of receipt by the stockholder.[13]

Footnotes

1 Maxwell v. Tull, 216 N.C. 500, 5 S.E.2d 546 (1939); Wilson v. South Carolina Tax Com'n, 220 S.C. 171, 66 S.E.2d 698 (1951); Morgan v. Wisconsin Tax Commission, 195 Wis. 405, 217 N.W. 407, 61 A.L.R. 357 (1928).

2 Watson v. Tax Commission, 135 Ohio St. 377, 14 Ohio Op. 251, 21 N.E.2d 126 (1939).

3 Maxwell v. Tull, 216 N.C. 500, 5 S.E.2d 546 (1939).

4 Dodge v. Commissioner of Corporations and Taxation, 273 Mass. 187, 174 N.E. 109 (1930).

5 Morgan v. Wisconsin Tax Commission, 195 Wis. 405, 217 N.W. 407, 61 A.L.R. 357 (1928).

6 Maxwell v. Tull, 216 N.C. 500, 5 S.E.2d 546 (1939).

7 Dodge v. Commissioner of Corporations and Taxation, 273 Mass. 187, 174 N.E. 109 (1930); Adams v. Delta & Pine Land Co., 89 Miss. 817, 42 So. 170 (1906).

8 People ex rel. Dauth & Mohr Taxpayer Holding Corp. v. Hennessey, 243 A.D. 667, 276 N.Y.S. 997 (3d Dep't 1935).

9 Wilson v. South Carolina Tax Com'n, 220 S.C. 171, 66 S.E.2d 698 (1951).

10 Dodge v. Commissioner of Corporations and Taxation, 273 Mass. 187, 174 N.E. 109 (1930).

11 Adams v. Delta & Pine Land Co., 89 Miss. 817, 42 So. 170 (1906).

12 Walter Alexander Co. v. Wisconsin Tax Commission, 215 Wis. 293, 254 N.W. 544 (1934).

13 Dodge v. Commissioner of Corporations and Taxation, 273 Mass. 187, 174 N.E. 109 (1930).

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Part Six. Income Taxes

XXII. Taxable Income

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2. Particular Types of Distributions

b. Dividends in Kind

§ 410. Stock dividends

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3458, 3461

Constitutional objections to taxation by a State of a stock dividend as income when received by the stockholders of a corporation have been overruled,[1] and the taxability of such a dividend is dependent upon the construction and application of the particular taxing statute.[2] Some state income tax statutes expressly exempt stock dividends from tax,[3] but under others, they are taxable.[4]

A stock dividend declared solely from an appreciation in the value of a corporation's assets rather than from its earnings or profits is not taxable income when received by a stockholder where the statute imposing a tax on dividends derived from stocks defines "dividends" as "any distribution made by a corporation … out of its earnings or profits."[5] Similarly, cash dividends paid out of accumulated profits that have been capitalized by the distribution of stock dividends are not subject to state income taxes because they are not a distribution of accumulated profits but are a distribution of capital within the meaning of a state income tax law providing that no distribution of capital shall be taxable as income but that accumulated profits shall not be regarded as capital.[6]

Footnotes

1 Posados v. Warner, Barnes & Co., 279 U.S. 340, 49 S. Ct. 333, 73 L. Ed. 729 (1929).

2 Trefry v. Putnam, 227 Mass. 522, 116 N.E. 904 (1917).

[3] Commissioner of Corporations and Taxation v. Morgan, 306 Mass. 305, 28 N.E.2d 217, 130 A.L.R. 402 (1940); People ex rel. Clark v. Gilchrist, 243 N.Y. 173, 153 N.E. 39 (1926).

[4] Trefry v. Putnam, 227 Mass. 522, 116 N.E. 904 (1917).

[5] State v. Cary, 191 Wis. 153, 210 N.W. 420 (1926).

[6] Commissioner of Corporations and Taxation v. Church, 318 Mass. 268, 61 N.E.2d 143 (1945).

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D. Corporate Distributions

2. Particular Types of Distributions

b. Dividends in Kind

§ 411. Distributions of stock of another corporation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3458

Perhaps the most frequent instance of a dividend in kind is a distribution by one corporation of stock in another corporation.[1] Such a distribution is a distribution of assets of the distributing corporation and, not being a stock dividend, is nontaxable under the authorities relating to stock dividends.[2] The distribution of stock in another corporation, however, is equivalent to the distribution of money under a statute taxing all gains, profits, or income of any kind derived from any source whatever except as specifically exempted.[3]

Footnotes

1 Dodge v. Commissioner of Corporations and Taxation, 273 Mass. 187, 174 N.E. 109 (1930); Maxwell v. Tull, 216 N.C. 500, 5 S.E.2d 546 (1939); Morgan v. Wisconsin Tax Commission, 195 Wis. 405, 217 N.W. 407, 61 A.L.R. 357 (1928).
As to distributions in connection with corporate reorganizations, see § 464.

2 Dodge v. Commissioner of Corporations and Taxation, 273 Mass. 187, 174 N.E. 109 (1930); Maxwell v. Tull, 216 N.C. 500, 5 S.E.2d 546 (1939); Morgan v. Wisconsin Tax Commission, 195 Wis. 405, 217 N.W. 407, 61 A.L.R. 357 (1928).

3 Morgan v. Wisconsin Tax Commission, 195 Wis. 405, 217 N.W. 407, 61 A.L.R. 357 (1928).

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3451, 3452, 3455

A.L.R. Library

A.L.R. Index, Capital Gain or Loss
A.L.R. Index, Income Taxes
A.L.R. Index, Taxes
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E. Insurance, Annuities, and Pensions

§ 412. Annuities

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3452

A.L.R. Library

Premiums paid by employer for insurance or annuity payable to employee as taxable income of latter, 7 A.L.R.2d 766

A state income tax law may tax income from annuities[1] although such income may be excluded under other state income tax law.[2] Payments under a contract calling for certain payments to a party will not come within an income tax exemption provided for annuities, however, where there is no investment of capital.[3] Some authority holds that when an employee withdraws money from a tax sheltered annuity, it becomes subject to income tax by both the federal government and the employee's state of residence at the time of the withdrawal even though the money was earned while the employee was a resident of another state.[4]

The premium paid by an employer on the purchase of a single-premium retirement annuity for a long-time employee as a reward to him or her should be included as income in the employee's state income tax return for the year of such payment, as additional compensation for services rendered, where the employee signed the application for such annuity policy (which contained death benefits, as well as annuity benefits) and also signed a certificate that the employee gave to the insurance agent the amount of the premium on that account, although there were no immediate benefits payable to the employee during the year of the return, and the cash surrender and loan value of the policy would not be available in the tax year.[5] However, a single premium paid by an employer to purchase for an employee, in appreciation of and as a reward for his or her faithful service, an annuity policy providing for an annual payment beginning the following year, to the employee, and after his or her death, to others as beneficiaries, and in obtaining which policy the taxpayer took no part except to sign the application as

the employee was required to do, does not constitute income of the employee derived from his or her employment and received in the calendar year of the payment of the premium within a state income tax statute taxing income derived from employment and received in the preceding year.[6]

Footnotes

1 Bacon v. Commissioner of Corporations and Taxation, 266 Mass. 547, 165 N.E. 664 (1929).

2 Sanborn v. McCanless, 181 Tenn. 150, 178 S.W.2d 765 (1944).

3 Fitzpatrick v. State Tax Commission, 15 Utah 2d 29, 386 P.2d 896 (1963).

4 Petersen v. Department of Revenue, 301 Or. 144, 719 P.2d 869 (1986).

5 State v. Pollock, 251 Ala. 603, 38 So. 2d 870, 7 A.L.R.2d 757 (1948).

6 Commissioner of Corporations and Taxation v. Kellaway, 317 Mass. 192, 56 N.E.2d 466 (1944).

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E. Insurance, Annuities, and Pensions

§ 413. Pensions and similar retirement benefits

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3451, 3455

A taxpayer's pension may be subject to a state's income tax,[1] and a State may lawfully tax pension income that a taxpayer receives in that state even though the income originates from a source in another state.[2] The payment of a pension or retirement allowance to a former employee as a result of his or her prior service is taxable income to the recipient inasmuch as it represents compensation for personal services.[3] A pension gratuitously paid to a person who had never been in the employ of the payor, however, is not taxable as a retirement allowance.[4] Old age benefits under the federal Social Security statute also are not retirement allowances subject to state income taxation.[5]

Observation:

When after-tax contributions to a retirement plan are returned to the retiree, that return is recovery of capital, and not income, and, therefore, is not subject to income tax.[6]

Footnotes

[1] Eibeck v. Indiana Dept. of State Revenue, 799 N.E.2d 1212 (Ind. Tax Ct. 2003).

As to the exemption of retirement benefits from state income taxation, generally, see § 386.

[2] Buras v. Department of Revenue, 338 Or. 12, 104 P.3d 1145 (2005).

[3] Everett v. Commissioner of Corporations and Taxation, 317 Mass. 612, 59 N.E.2d 186 (1945).

[4] Lyon v. Commissioner of Corporations and Taxation, 258 Mass. 450, 155 N.E. 440 (1927).

[5] State Tax Commission v. Gray, 340 Mass. 535, 165 N.E.2d 404 (1960).

[6] Weiss v. McFadden, 353 Ark. 868, 120 S.W.3d 545 (2003).

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XXII. Taxable Income

E. Insurance, Annuities, and Pensions

§ 414. Fire insurance proceeds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3451

Fire insurance proceeds, being only an indemnity by substitution of a different character of property for that which was destroyed by fire, and resulting in no real gain to the insured, are not income under a statute not enumerating such proceeds as an element of income.[1] Where a taxpayer receives an amount of fire insurance proceeds as a result of the partial destruction of a building owned by him or her, and such amount exceeds the cost of the building less depreciation, the gain is subject to income tax.[2]

Footnotes

1 Independent Loose Leaf Warehouse v. Howard, 305 Ky. 500, 204 S.W.2d 810 (1947).

2 Commissioner of Revenue v. Speizman, 230 N.C. 459, 53 S.E.2d 533 (1949).

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Part Six. Income Taxes

XXII. Taxable Income

F. Amounts Received by Virtue of Gift, Bequest, or Inheritance

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3451, 3464

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F. Amounts Received by Virtue of Gift, Bequest, or Inheritance

§ 415. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3451, 3464

A.L.R. Library

Income tax: employer's payment to widow of employee as taxable income of widow, 95 A.L.R.2d 520

While state income tax laws usually contain a provision expressly exempting from tax the value of property acquired by gift,[1] bequest,[2] or inheritance,[3] the income from property acquired by such means is taxable.[4] Taxable income from property acquired by such methods also includes the proceeds from the sale of such property.[5]

Payments to an employee's widow, pursuant to an employment contract, are not exempt from taxation as property acquired by bequest, devise, or descent.[6]

A bequest to one who is made the executor or trustee under a will may be exempt from income tax although the will provides that it shall be in lieu of all compensation to which he or she would otherwise be entitled.[7]

Funds received from a charitable trust set up specifically to assist worthy students in obtaining and improving their educational training are in the nature of gifts, and not income, when the sole purpose to be accomplished is for the benefit of the recipients.[8]

Strike benefits paid by a union to a striker during a strike are gifts and therefore excludable from the striker's taxable income.[9]

Footnotes

[1] Malmgren v. McColgan, 20 Cal. 2d 424, 126 P.2d 616 (1942); Stone v. Lynch, 312 N.C. 739, 325 S.E.2d 230 (1985); Bayles v. State Tax Commission, 21 Utah 2d 369, 445 P.2d 984 (1968); Com. v. Hannaford, 159 Va. 84, 165 S.E. 512 (1932).

[2] Malmgren v. McColgan, 20 Cal. 2d 424, 126 P.2d 616 (1942); Maxwell v. Waddell, 212 N.C. 572, 194 S.E. 315 (1937); Bayles v. State Tax Commission, 21 Utah 2d 369, 445 P.2d 984 (1968).

[3] Malmgren v. McColgan, 20 Cal. 2d 424, 126 P.2d 616 (1942); Maxwell v. Waddell, 212 N.C. 572, 194 S.E. 315 (1937); Bayles v. State Tax Commission, 21 Utah 2d 369, 445 P.2d 984 (1968).

[4] Maxwell v. Waddell, 212 N.C. 572, 194 S.E. 315 (1937); Seymour v. Department of Revenue, 311 Or. 254, 809 P.2d 100 (1991); Com. v. Hannaford, 159 Va. 84, 165 S.E. 512 (1932).

[5] Com. v. Hannaford, 159 Va. 84, 165 S.E. 512 (1932).

[6] Roberts v. Ellis, 229 Or. 609, 368 P.2d 342 (1962).

[7] Dean v. Commissioner of Corporations and Taxation, 258 Mass. 555, 155 N.E. 437, 50 A.L.R. 1400 (1927).

[8] Bayles v. State Tax Commission, 21 Utah 2d 369, 445 P.2d 984 (1968).

[9] Stone v. Lynch, 312 N.C. 739, 325 S.E.2d 230 (1985).

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XXII. Taxable Income

F. Amounts Received by Virtue of Gift, Bequest, or Inheritance

§ 416. Testamentary annuities

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3451, 3464

In conformity with a statute subjecting annuity income to one rate of tax and income received from trustees to another, the payment of a definite sum under a testamentary trust by the terms of which the corpus could be invaded if income was inadequate is not taxable as an annuity.[1] Payments pursuant to a "technical annuity" established by will, to be made in any event regardless of the sufficiency of income of the corpus, are not taxable to the annuitant.[2]

Footnotes

1 Staples v. Commissioner of Corporations and Taxation, 305 Mass. 20, 24 N.E.2d 641 (1940).

2 Meanley v. McColgan, 49 Cal. App. 2d 313, 121 P.2d 772 (1st Dist. 1942); Harte v. Chapman, 283 A.D. 551, 129 N.Y.S.2d 33 (3d Dep't 1954).

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Part Six. Income Taxes

XXIII. Persons to Whom Income Is Taxable

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3480, 3484, 3487, 3493, 3494

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Part Six. Income Taxes

XXIII. Persons to Whom Income Is Taxable

§ 417. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3480

Income is taxed to the party who earns it.[1] In the case of a sole proprietorship, the income of the sole proprietorship is taxed through the owner.[2] A taxpayer is not subject to income tax on income that he or she receives in an agency capacity[3] or on receipts received on behalf of a third person.[4]

A taxpayer cannot minimize or avoid taxation solely by creating a separate taxable entity to receive income as the creation alone will not guarantee that the entity is deemed to have earned the income in question.[5] A party earning income cannot avoid taxation by an anticipatory assignment of income[6] or, in other words, by entering into a contractual arrangement whereby that income is diverted to some other person or entity.[7] Furthermore, a taxpayer's assignment of stocks and bonds in trust, retaining the net income therefrom, does not relieve the taxpayer of liability for income taxes thereon.[8] Where there has been a valid and bona fide assignment of income-producing property, however, the income thereafter arising from the property is taxable to the assignee and is not taxable to the assignor.[9]

Footnotes

1 Matter of Aloha Airlines, Inc., 56 Haw. 626, 547 P.2d 586 (1976); Luker v. State Tax Assessor, 2011 ME 52, 17 A.3d 1198 (Me. 2011).

2 Dolby v. Worthy, 141 Wash. App. 813, 173 P.3d 946 (Div. 3 2007).

3 Norrell Services, Inc. v. Indiana Dept. of State Revenue, 816 N.E.2d 517 (Ind. Tax Ct. 2004).

4 U-Haul Co. of Indiana, Inc. v. Indiana Dept. of State Revenue, 784 N.E.2d 1078 (Ind. Tax Ct. 2002).

5 Luker v. State Tax Assessor, 2011 ME 52, 17 A.3d 1198 (Me. 2011).

[6] Matter of Aloha Airlines, Inc., 56 Haw. 626, 547 P.2d 586 (1976).
The assignment of income incorporated into a taxpayer's vow of poverty taken when he became an ordained minister was not effective to render his income from the practice of naturopathic and chiropractic medicine exempt from taxes. Department of Revenue, State of Or. v. Rombough, 293 Or. 477, 650 P.2d 76 (1982).

[7] The Pillsbury Co. v. Franchise Tax Bd., 124 Cal. App. 4th 892, 21 Cal. Rptr. 3d 819 (1st Dist. 2004).

[8] Splane v. Oklahoma Tax Com'n, 1940 OK 34, 186 Okla. 463, 99 P.2d 120 (1940).

[9] Reed v. Browne, 295 N.Y. 184, 66 N.E.2d 47, 165 A.L.R. 1061 (1946).

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XXIII. Persons to Whom Income Is Taxable

§ 418. Intrafamily transactions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3480, 3484

A.L.R. Library

Income tax treatment of payment to spouse for relinquishment of inchoate marital rights in property of other spouse, 1 A.L.R.2d 1037

Dealings between family members frequently have income tax consequences, and an owner of corporate bonds who detaches therefrom, before their maturity, the interest coupons payable to bearer and makes a valid gift thereof to his or her child, is no longer subject to tax on the interest from the bonds, but rather, such interest is taxable to the child who receives it as income.[1] Where a husband transfers an interest in a business to his wife without any fraudulent intent to evade a tax, the fact that the transfer was made under an invalid antenuptial contract, and so was without consideration and was a mere gift, does not make the husband taxable on the whole income from the business thereafter, and the gift may not be treated as fraudulent or nonexistent even though it results in less taxes to the state.[2]

On the ground that trust income is merely being applied to discharge a legal obligation of support, a settlor has been held taxable on trust income used for the support of the settlor's minor son where the trust instrument authorized the settlor, as trustee, to use such part of the income as in his or her opinion was proper or necessary for the care, support, maintenance, and education of the son in case that such support was not otherwise furnished.[3]

Where a husband's earnings in one state, where he is domiciled, is community property, the wife's one-half interest in those earnings may be included in determining the wife's taxable income in another state where she is domiciled where her one-half interest in such earnings is subject to federal taxation, and the tax scheme of the wife's state of domicile mirrors that of federal law.[4] Under the law of one jurisdiction, even if a wife does not have a job, half her husband's income is imputed to

her and is taxable to her.[5] On the other hand, in another jurisdiction, a wife is not liable for an income tax deficiency where there is no finding that the wife earned any income during the period in question.[6]

Footnotes

1 Commissioner of Corporations and Taxation v. Williston, 315 Mass. 648, 54 N.E.2d 43, 151 A.L.R. 1395 (1944).

2 Burwell v. South Carolina Tax Commission, 130 S.C. 199, 126 S.E. 29, 38 A.L.R. 1256 (1924).

3 Gilkey v. Wisconsin Tax Commission, 228 Wis. 297, 280 N.W. 406 (1938).

4 Parker v. Idaho State Tax Com'n, 148 Idaho 842, 230 P.3d 734 (2010).

5 Matter of Bruner, 55 F.3d 195 (5th Cir. 1995) (applying Louisiana law).

6 Jensen v. State Tax Com'n, 835 P.2d 965 (Utah 1992).

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Part Six. Income Taxes

XXIII. Persons to Whom Income Is Taxable

§ 419. Trust income

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3493, 3494

According to some state income statutes, the income of an ordinary trust is taxable to the beneficiaries, but where the trust is discretionary, the trustee is liable for income tax upon the entire trust income.[1]

In some states, the settlors of grantor trusts, or in other words, those trusts over which the settlors retain substantial control, are liable for the state income tax on the income earned by the trusts.[2] In other states, where the income tax law provides for the taxation of the income of a trust to the beneficiaries without making any distinction between income from a revocable, or from an irrevocable, trust, the income of the revocable trust is taxable to the beneficiary and not to the settlor.[3] In still other states, corporate distributions of stock are taxable as a capital gain to a revocable trust unless such distribution is received as income under the trust law of the taxing state and is distributable as income under the terms of the trust or is subject to withdrawal by the beneficiary through the exercise of powers other than the power of complete or partial termination of the trust.[4]

Some state income tax statutes provide that the computation of tax for individuals applies to the tax liability of all trusts except those taxed as a corporation under the Internal Revenue Code.[5] A provision that stock dividends, when received by a shareholder, shall not be subject to income tax applies even where the recipient taxpayer is a beneficiary of a trust.[6]

CUMULATIVE SUPPLEMENT

Cases:

Under Due Process Clause, the presence of in-state beneficiaries alone does not empower a State to tax trust income that has not been distributed to the beneficiaries where the beneficiaries have no right to demand that income and are uncertain ever to receive it. U.S. Const. Amend. 14. North Carolina Department of Revenue v. The Kimberley Rice Kaestner 1992 Family

Trust, 139 S. Ct. 2213 (2019).

[END OF SUPPLEMENT]

Footnotes

1 Guaranty Trust Co. of N.Y. v. Com. of Va., 305 U.S. 19, 59 S. Ct. 1, 83 L. Ed. 16 (1938); Oklahoma Tax Com'n v. Weinig, 1942 OK 158, 190 Okla. 524, 125 P.2d 772 (1942).
As to the taxability of trust income with foreign elements, see § 383.

2 Lovell v. Levin, 116 Ohio St. 3d 200, 2007-Ohio-6054, 877 N.E.2d 667 (2007).

3 Oates v. Ballard, 299 Ky. 661, 186 S.W.2d 650, 159 A.L.R. 98 (1945).

4 State Tax Com'r v. Wilmington Trust Co., 266 A.2d 419 (Del. Super. Ct. 1968).

5 FirsTier Bank, N.A. v. Department of Revenue, 254 Neb. 918, 580 N.W.2d 537 (1998).

6 People ex rel. Clark v. Gilchrist, 243 N.Y. 173, 153 N.E. 39 (1926).

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Part Six. Income Taxes

XXIII. Persons to Whom Income Is Taxable

§ 420. Trust income—Accumulated income

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3494

An accumulation of income by a trust in past years, distributed to the beneficiary in the tax year, is not taxable to the beneficiary in the later year if the interest of the beneficiary is a contingent one.[1] A contrary rule has been adopted, however, where the trustee is not under a duty to accumulate income.[2]

Capital gains retained as principal by the trustee of a revocable trust are taxable as income to the trust rather than to the income beneficiary even though the trustee could, under the terms of the trust, have allocated the capital gains to income or to principal.[3] A distribution of corporate stock pursuant to an antitrust decree, if added to principal and not passed on to the beneficiary or credited to him or her subject to withdrawal as income, is taxable as income to the trust and not to the income beneficiary of the trust.[4] Moreover, stock distributed pursuant to such a decree is properly allocated to principal under a trust provision requiring the trustee to allocate to principal all corporate distributions which might reasonably reduce future corporate earning capacity.[5]

Footnotes

1 Commissioner of Corporations and Taxation v. Simmon, 292 Mass. 507, 198 N.E. 741, 102 A.L.R. 273 (1935); Mahler v. Conway, 236 Wis. 582, 295 N.W. 772 (1941).
A State's taxation scheme of the undistributed income of a resident inter vivos trust in which the trustees, trust assets, and administration were located outside of the state's borders did not violate the Due Process Clause where a noncontingent beneficiary of the trust during the tax year in question was a state domiciliary. Chase Manhattan Bank v. Gavin, 249 Conn. 172, 733 A.2d 782 (1999).

2 Commissioner of Corporations and Taxation v. Eaton, 304 Mass. 260, 23 N.E.2d 559 (1939).

3 State Tax Commissioner v. Stephenson, 267 A.2d 464 (Del. Super. Ct. 1970), judgment aff'd, 275 A.2d 566 (Del.

1971).

[4] State Tax Commissioner v. Stephenson, 267 A.2d 464 (Del. Super. Ct. 1970), judgment aff'd, 275 A.2d 566 (Del. 1971).

[5] State Tax Com'r v. Wilmington Trust Co., 266 A.2d 419 (Del. Super. Ct. 1968).

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Part Six. Income Taxes

XXIII. Persons to Whom Income Is Taxable

§ 421. Partners

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3487

A.L.R. Library

State Income Tax Treatment of Partnerships and Partners, 2 A.L.R.6th 1

A partnership ordinarily pays no income tax, but rather, the individual partners pay such tax on their distributable shares of the net profits of the partnership.[1] Taxpayers, in determining their distributive share of partnership income, can deduct partnership business expenses against all types of partnership income, including dividends and capital gains, realized in the ordinary course of the partnership's business.[2]

In order for partners to be permitted to distribute the income tax burden pursuant to their interests in the partnership, the partnership must exist in reality and not be a mere pretense,[3] and in some states, an entity must elect to be treated as a partnership for federal tax purposes in order to be treated as a partnership under its income tax law.[4] Positive indicia which have been regarded as tending to demonstrate that there is a real partnership for income tax purposes include—
— contribution to capital by each partner.[5]
— distribution of assets to each partner upon termination of the partnership.[6]
— the actual performance of services by each partner.[7]
Family partnerships are scrutinized by the courts with great care, and if the only thing accomplished by such a partnership is the division of income so as to reduce tax liability, the case requires very careful examination into the reality of what purports to be a partnership and whether the donor in fact parted with control of the shares of the partnership business.[8]

While there is authority requiring the allocation of a partner's distributive share of the partnership income, in the case of a partnership doing business outside the taxing state,[9] a partner's whole distributive share of the profits of the partnership has

been held to be taxable by the state in which he or she is a resident even though the business of the partnership may be wholly located outside such state, and the partner may be subject to income tax in other states on such share.[10] Under a state income tax statute, a nonresident taxpayer, who is a partner in a partnership, may be responsible for paying his or her share of the partnership's tax liability on the gain realized by the partnership from a discharge of indebtedness regardless of whether the taxpayer lost money on his or her investment in the partnership.[11]

Footnotes

1 Matter of Hawaiian Telephone Co., 61 Haw. 572, 608 P.2d 383 (1980); Goldberg v. Gray, 70 N.D. 663, 297 N.W. 124 (1941); Krauss v. Department of Revenue, 257 Or. 637, 480 P.2d 703 (1971).
The rule whereby the income or losses of a partnership must be passed through and distributed to individual partners for separate inclusion or deduction in individual tax returns is equally applicable to a limited partnership. Ellis v. South Carolina Tax Com'n, 280 S.C. 65, 309 S.E.2d 761 (1983).

2 Smith v. Director, Div. of Taxation, 108 N.J. 19, 527 A.2d 843 (1987).

3 State v. Hitchcock, 228 Minn. 335, 37 N.W.2d 378 (1949).

4 Kaplan v. Director, Div. of Taxation, 23 N.J. Tax 594, 2008 WL 269022 (2008), judgment aff'd, 24 N.J. Tax 415, 2009 WL 321567 (Super. Ct. App. Div. 2009).

5 State v. Hitchcock, 228 Minn. 335, 37 N.W.2d 378 (1949); Eaton v. State Bd. of Tax Com'rs, 261 A.D. 468, 26 N.Y.S.2d 886 (3d Dep't 1941).

6 Eaton v. State Bd. of Tax Com'rs, 261 A.D. 468, 26 N.Y.S.2d 886 (3d Dep't 1941).

7 State v. Hitchcock, 228 Minn. 335, 37 N.W.2d 378 (1949).

8 State v. Hitchcock, 228 Minn. 335, 37 N.W.2d 378 (1949).

9 Village of Westby v. Bekkedal, 172 Wis. 114, 178 N.W. 451 (1920).

10 Bechert v. Commissioner of Taxation, 221 Minn. 65, 21 N.W.2d 101 (1945); Goldberg v. Gray, 70 N.D. 663, 297 N.W. 124 (1941).

11 Marshall v. Com., 2012 WL 8704 (Pa. Commw. Ct. 2012).

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Part Six. Income Taxes

XXIV. Deductions

A. In General

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3433, 3501, 3504, 3506, 3519, 3520

A.L.R. Library

A.L.R. Index, Deductions
A.L.R. Index, Income Tax
A.L.R. Index, Taxes
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XXIV. Deductions

A. In General

§ 422. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3501

A tax deduction from gross income is not a right.[1] Rather, deductions are allowed only as a matter of legislative grace.[2] As a result, one claiming the deduction bears the burden of proving that he or she is entitled to it[3] by bringing himself or herself clearly within the terms and conditions that are imposed by the statute.[4]

Footnotes

1 Horowitz v. New York City Tax Appeals Tribunal, 41 A.D.3d 101, 837 N.Y.S.2d 89 (1st Dep't 2007).

2 Surtees v. VFJ Ventures, Inc., 8 So. 3d 950 (Ala. Civ. App. 2008), aff'd, 8 So. 3d 983 (Ala. 2008); Citifinancial Retail Services Div. of Citicorp Trust Bank, FSB v. Weiss, 372 Ark. 128, 271 S.W.3d 494 (2008); River Garden Retirement Home v. Franchise Tax Bd., 186 Cal. App. 4th 922, 113 Cal. Rptr. 3d 62 (1st Dist. 2010), review denied, (Nov. 10, 2010); Brosnan v. Undercofler, 111 Ga. App. 95, 140 S.E.2d 517 (1965); Drapkin v. Commissioner of Revenue, 420 Mass. 333, 649 N.E.2d 1094 (1995); Seltz v. Director of Revenue, 934 S.W.2d 293 (Mo. 1996); Horowitz v. New York City Tax Appeals Tribunal, 41 A.D.3d 101, 837 N.Y.S.2d 89 (1st Dep't 2007); Kinney Shoe Corp. v. State By and Through Hanson, 552 N.W.2d 788 (N.D. 1996).
As to depletion deductions as a matter of legislative grace, see § 444.

3 Citifinancial Retail Services Div. of Citicorp Trust Bank, FSB v. Weiss, 372 Ark. 128, 271 S.W.3d 494 (2008); Brosnan v. Undercofler, 111 Ga. App. 95, 140 S.E.2d 517 (1965); Drapkin v. Commissioner of Revenue, 420 Mass. 333, 649 N.E.2d 1094 (1995); Citrin Cooperman & Co., LLP v. Tax Appeals Tribunal of City of New York, 52 A.D.3d 228, 859 N.Y.S.2d 158 (1st Dep't 2008); Southern Soya Corp. of Cameron v. Wasson, 252 S.C. 484, 167 S.E.2d 311 (1969).
Tax deductions depend upon clear statutory provisions, and burden is on taxpayer to establish right to them. Karlsberg

v. Tax Appeals Tribunal of State, 85 A.D.3d 1347, 925 N.Y.S.2d 237 (3d Dep't 2011), appeal dismissed, 17 N.Y.3d 900, 933 N.Y.S.2d 649, 957 N.E.2d 1153 (2011).

[4] Citifinancial Retail Services Div. of Citicorp Trust Bank, FSB v. Weiss, 372 Ark. 128, 271 S.W.3d 494 (2008).

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Part Six. Income Taxes

XXIV. Deductions

A. In General

§ 423. Construction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3501, 3504

To protect the State from unanticipated losses, courts narrowly or strictly construe tax deduction statutes[1] in favor of the taxing authority[2] and against the taxpayer.[3] Thus, taxation is generally the rule, and deductions are the exceptions.[4]

Observation:

The rule of strict construction of provisions allowing tax deductions applies only when a local governing body has the clear statutory authority to impose a tax in the first place.[5]

Footnotes

1 City of Lynchburg v. English Const. Co., Inc., 277 Va. 574, 675 S.E.2d 197 (2009); HomeStreet, Inc. v. State, Dept. of Revenue, 166 Wash. 2d 444, 210 P.3d 297 (2009); Whidbey General Hosp. v. State, 143 Wash. App. 620, 180 P.3d 796 (Div. 2 2008), as corrected, (Apr. 22, 2008).

2 Citrin Cooperman & Co., LLP v. Tax Appeals Tribunal of City of New York, 52 A.D.3d 228, 859 N.Y.S.2d 158 (1st Dep't 2008).

[3] City of Lynchburg v. English Const. Co., Inc., 277 Va. 574, 675 S.E.2d 197 (2009).

[4] HomeStreet, Inc. v. State, Dept. of Revenue, 166 Wash. 2d 444, 210 P.3d 297 (2009).

[5] City of Lynchburg v. English Const. Co., Inc., 277 Va. 574, 675 S.E.2d 197 (2009).

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Part Six. Income Taxes

XXIV. Deductions

A. In General

§ 424. Effect of federal deductions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3433, 3501, 3519

A State, subject to constitutional limitations, may fashion its own taxing scheme.[1] In doing so, a State is not required to use the same deductions that the federal taxation scheme allows[2] and may prohibit certain deductions that the federal tax code allows.[3]

Observation:

Even where a state statute adopts, in part, federal law regarding itemized deductions, the state statute may also explicitly set forth specific exceptions that are not substantially similar to federal tax law.[4] Such exceptions may reduce the amount allowed for all itemized deductions based on the adjusted gross income of the taxpayer.[5]

Footnotes

[1] Surtees v. VFJ Ventures, Inc., 8 So. 3d 950 (Ala. Civ. App. 2008), aff'd, 8 So. 3d 983 (Ala. 2008).
New Jersey's Gross Income Tax Act is not based on the Federal Internal Revenue Code. Schulmann v. Director, New Jersey Div. of Taxation, 423 N.J. Super. 333, 32 A.3d 1133 (App. Div. 2011).
As to provisions in state law providing for conformity with state law, see § 365.

[2] Surtees v. VFJ Ventures, Inc., 8 So. 3d 950 (Ala. Civ. App. 2008), aff'd, 8 So. 3d 983 (Ala. 2008).
Deductions allowable federally are not automatically allowable for the purposes of state taxation. Schulmann v. Director, Div. of Taxation, 25 N.J. Tax 573, 2011 WL 103031 (2011), aff'd, 423 N.J. Super. 333, 32 A.3d 1133 (App. Div. 2011).

[3] Schulmann v. Director, New Jersey Div. of Taxation, 423 N.J. Super. 333, 32 A.3d 1133 (App. Div. 2011).
As to the effect of federal tax return regarding business expenses, see § 426.

[4] Karlsberg v. Tax Appeals Tribunal of State, 85 A.D.3d 1347, 925 N.Y.S.2d 237 (3d Dep't 2011), appeal dismissed, 17 N.Y.3d 900, 933 N.Y.S.2d 649, 957 N.E.2d 1153 (2011).

[5] Karlsberg v. Tax Appeals Tribunal of State, 85 A.D.3d 1347, 925 N.Y.S.2d 237 (3d Dep't 2011), appeal dismissed, 17 N.Y.3d 900, 933 N.Y.S.2d 649, 957 N.E.2d 1153 (2011).

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XXIV. Deductions

B. Business Expenses

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Research References

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Gift as Ordinary and Necessary Business Expense, 40 Am. Jur. Proof of Facts 2d 703

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B. Business Expenses

§ 425. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3501, 3506 to 3508

Trial Strategy

Gift as Ordinary and Necessary Business Expense, 40 Am. Jur. Proof of Facts 2d 703

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 228 (Complaint, petition or declaration—For recovery of gift and corporate income taxes paid under protest—Deduction of payments to surviving spouse of corporate officer erroneously disallowed—Payments as constituting ordinary and necessary business expenses)

Income tax statutes frequently allow the deduction of ordinary and necessary expenses paid or incurred in carrying on a trade or business[1] but deny a deduction on account of personal, living, or family expenses.[2] Ordinarily, separate corporate identities of corporate subsidiaries preclude a parent corporation from deducting expenses incurred by the subsidiaries.[3] Capital expenditures generally are not deductible.[4]

For an amount expended to constitute an allowable expense deduction, it must:[5]

(1) be related to the maintenance and operation of the taxpayer's business or business properties,

(2) be ordinary, and

(3) be necessary.

In order to meet the test of ordinary and necessary expenses, a taxpayer need show only that the expenditures were appropriate and helpful.[6] However, the concept of the meaning of "necessary expenses of operation" may change from time to time as accepted methods of accounting change[7] so that its meaning and usage is a proper subject for expert testimony.[8]

The application of excess deductions against income which is allowed with respect to income effectively connected with a taxpayer's trade or business is intended to serve as an offset of business expenses against business income, resulting in the taxation of net income.[9] Thus, where income is taxable in a state, the expenses incurred in generating that income may be matched against it as a deduction in that state.[10] Conversely, where income is not taxable in a state, the expenses incurred in generating that income may not be matched against it as a deduction in the state.[11]

The cost of life insurance taken out by a corporation in its favor upon the life of its president and general manager is not a deductible business expense.[12] A lawyer who gives up his or her private practice to accept appointment to a judicial office may not deduct as a business expense his or her filing fees and campaign expenses connected with his or her subsequent election to that office.[13]

CUMULATIVE SUPPLEMENT

Cases:

"Necessary business expense" under the income tax provision of the Internal Revenue Code may be an expense that is merely helpful and appropriate. 26 U.S.C.A. § 162(a). Ayestas v. Davis, 138 S. Ct. 1080 (2018).

[END OF SUPPLEMENT]

Footnotes

1 Arizona State Tax Commission v. Kieckhefer, 67 Ariz. 102, 191 P.2d 729 (1948); In re Kroger Co., 270 Kan. 148, 12 P.3d 889 (2000), as corrected, (Dec. 21, 2000); People ex rel. Merrill v. Gilchrist, 212 A.D. 763, 210 N.Y.S. 385 (3d Dep't 1925); Hoffman Co. v. Wisconsin Dept. of Revenue, 51 Wis. 2d 220, 186 N.W.2d 228 (1971).

2 People ex rel. Kernochan v. Law, 204 A.D. 167, 197 N.Y.S. 652 (3d Dep't 1923), aff'd, 236 N.Y. 529, 142 N.E. 271 (1923).
As to personal deductions, see §§ 447 to 456.

3 Purcell Co., Inc. v. Mississippi State Tax Com'n, 569 So. 2d 297 (Miss. 1990).

4 Natural Gas Pipe Line Co. of America v. State Commission of Revenue and Taxation, 155 Kan. 416, 125 P.2d 397, 140 A.L.R. 1341 (1942); Wiscassett Mills Co. v. Shaw, 235 N.C. 14, 68 S.E.2d 816 (1952).

5 Arizona State Tax Commission v. Kieckhefer, 67 Ariz. 102, 191 P.2d 729 (1948); Rosse v. Commissioner of Revenue, 430 Mass. 431, 720 N.E.2d 791 (1999).

6 In re Kroger Co., 270 Kan. 148, 12 P.3d 889 (2000), as corrected, (Dec. 21, 2000).

7 UMB Bank, NA. v. City of Kansas City, 238 S.W.3d 228 (Mo. Ct. App. W.D. 2007).

[8] UMB Bank, NA. v. City of Kansas City, 238 S.W.3d 228 (Mo. Ct. App. W.D. 2007).

[9] Rosse v. Commissioner of Revenue, 430 Mass. 431, 720 N.E.2d 791 (1999).

[10] Emerson Elec. Co. v. South Carolina Dept. of Revenue, 395 S.C. 481, 719 S.E.2d 650 (2011).

[11] Emerson Elec. Co. v. South Carolina Dept. of Revenue, 395 S.C. 481, 719 S.E.2d 650 (2011).

[12] In re Taxes Von Hamm-Young Co., 36 Haw. 11, 1941 WL 7958 (1941).

[13] O'Donnell v. Comptroller of Treasury, 268 Md. 412, 302 A.2d 42 (1973).

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Part Six. Income Taxes

XXIV. Deductions

B. Business Expenses

§ 426. Effect of federal income tax return

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3506

Because, in many states, a taxpayer's state gross income is determined by the taxpayer's adjusted gross income reported on the federal income tax return,[1] business expenses incurred but not deducted on the federal return are disallowed on the state tax return as there is no specifically enumerated adjustment to federal adjusted gross income.[2] Further, when a corporation elects to treat certain expenses as tax credits instead of deductions against its federal income tax, such expenses may not be deducted from gross income in determining the corporation's state taxable income.[3] Likewise, by agreeing in a settlement with the Internal Revenue Service to characterize a transaction as something other than a fully deductible ordinary and necessary business expense, a taxpayer binds himself or herself to that characterization for state income tax purposes.[4]

Footnotes

1 As to the effect of federal deductions, generally, see § 424.

2 Matteson v. Director of Revenue, State of Mo., 909 S.W.2d 356 (Mo. 1995).

3 Potlatch Corp. v. Idaho State Tax Com'n, 128 Idaho 387, 913 P.2d 1157 (1996).

4 Seltz v. Director of Revenue, 934 S.W.2d 293 (Mo. 1996).

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B. Business Expenses

§ 427. Expenditures by lessees

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3501, 3506 to 3508

Rentals required to be paid for the use or possession of business property not owned by the taxpayer and in which he or she has no equity may be deducted in computing income tax.[1] However, where an expenditure made by a lessee is in the nature of an investment in property used in his or her trade or business, or is the cost, or part of the cost, of the lease itself, it cannot be deducted in toto from the lessee's taxable income as an expense for the year in which it occurred but must be recovered in annual allowances.[2] Thus, advance rentals and bonuses, the price paid for an assignment of a lease, and other similar expenditures by a lessee are not deductible as ordinary and necessary business expenses in the year of payment but are required to be spread over the entire life of the lease.[3]

Footnotes

1 Wiscassett Mills Co. v. Shaw, 235 N.C. 14, 68 S.E.2d 816 (1952).

2 Wiscassett Mills Co. v. Shaw, 235 N.C. 14, 68 S.E.2d 816 (1952).

3 Wiscassett Mills Co. v. Shaw, 235 N.C. 14, 68 S.E.2d 816 (1952).

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XXIV. Deductions

B. Business Expenses

§ 428. Salaries; stock options

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3501, 3506 to 3508

The amount paid or owed as compensation for services performed in connection with the taxpayer's trade or business is an allowable deduction in computing his or her income tax.[1] However, so-called salaries paid by corporations may not be deducted where they are unreasonable under the circumstances and are merely a scheme for the distribution of profits.[2]

Observation:

The money that a taxpayer earns for his or her work as a physician must be reported as income under a state income tax statute despite his or her contention that he or she has no net income because his or her labor is a deductible expense whose value is equal to what he or she is paid for it.[3]

Footnotes

1 People ex rel. H. Jaeckel & Sons v. Gilchrist, 209 A.D. 120, 204 N.Y.S. 509 (3d Dep't 1924).

2 People ex rel. H. Jaeckel & Sons v. Gilchrist, 209 A.D. 120, 204 N.Y.S. 509 (3d Dep't 1924).

[3] Thomas v. Department of Revenue, 326 Or. 397, 952 P.2d 542 (1998).

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B. Business Expenses

§ 429. Expenses of litigation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3501, 3506 to 3508

A.L.R. Library

Income tax: deductibility of amount paid or expense incurred by taxpayer on account of his liability or alleged liability for tort, crime, or statutory violation, 20 A.L.R.2d 600

Where litigation is directly connected with, or proximately results from, the taxpayer's trade or business, the attorney's fees and other expenses of the litigation are deductible in computing his or her income tax as ordinary and necessary business expenses.[1] A taxpayer can deduct legal expenses in connection with his or her opposition of an additional assessment of federal income tax arising out of and directly connected with his or her business.[2] However, where the litigation is not directly connected with, and does not proximately result from, a trade or business carried on by the taxpayer, such expenses may not be deducted.[3] Similarly, expenses incurred in defending a murder prosecution in which the taxpayer was acquitted on a plea of self-defense were not deductible as "ordinary and necessary" business expenses although the homicide arose out of the taxpayer's assertion of his or her right to use a road for the purpose of carrying on a ranching business.[4]

A corporation, although on an accrual basis, cannot take as a deduction a reserve for a sum for which it was being sued until such claim ripens into judgment.[5]

Footnotes

[1] Protest of Hales-Mullaly, Inc., 1940 OK 31, 186 Okla. 693, 100 P.2d 274 (1940).

[2] People ex rel. Mosbacher v. Graves, 254 A.D. 438, 5 N.Y.S.2d 553 (3d Dep't 1938), order aff'd, 279 N.Y. 793, 19 N.E.2d 89 (1939).

[3] People ex rel. Kernochan v. Wendell, 198 A.D. 197, 190 N.Y.S. 749 (3d Dep't 1921), aff'd, 232 N.Y. 551, 134 N.E. 568 (1921).

[4] Sproul v. State Tax Commission, 234 Or. 567, 382 P.2d 99 (1963).

[5] State v. Wisconsin Tax Commission, 185 Wis. 525, 201 N.W. 764 (1925).

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3503

A.L.R. Library

A.L.R. Index, Deductions
A.L.R. Index, Income Tax
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West's A.L.R. Digest, Taxation 3503

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§ 430. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3503

Interest paid or accrued by the taxpayer on indebtedness is deductible in computing income tax.[1] The term "interest," in the context of an income tax statute, has the usual meaning of the amount which one has contracted to pay for the use of borrowed money.[2] Taxpayers are not entitled to an interest deduction on a sham sale and leaseback transaction.[3] Interest which is not paid in any year and is not deducted from the gross income of the taxpayer in its return may be carried over as a capital loan and interest thereon later allowed.[4] Moreover, if a taxpayer receives services for which it does not pay, but allows the value of such services to stand as an indebtedness, it may deduct interest which it pays upon such indebtedness.[5]

Interest on money borrowed to finance the commencement of a business, or to refinance an original debt incurred to finance such a commencement, is not deductible since such an expense is capital in nature and not money borrowed for ordinary expenditures in the carrying out of the business of a corporation.[6] However, interest paid on a loan secured by a single payment annuity is deductible as interest on an indebtedness.[7]

Footnotes

1 Arizona State Tax Commission v. Phelps Dodge Corporation, 53 Ariz. 252, 88 P.2d 79, 121 A.L.R. 1458 (1939); Howard v. Franchise Tax Bd., 243 Cal. App. 2d 482, 52 Cal. Rptr. 547 (2d Dist. 1966); Baisch v. Department of Revenue, 316 Or. 203, 850 P.2d 1109 (1993); Rib Lake Lumber Co. of Del. v. Conway, 212 Wis. 412, 249 N.W. 322 (1933).

2 Department of Revenue v. King Bros. Motor Co., 70 Ga. App. 741, 29 S.E.2d 529 (1944).

3 Baisch v. Department of Revenue, 316 Or. 203, 850 P.2d 1109 (1993).

[4] Arizona State Tax Commission v. Tucson Gas, Electric Light & Power Co., 55 Ariz. 472, 103 P.2d 467 (1940), opinion modified on other grounds, 55 Ariz. 519, 103 P.2d 955 (1940).

[5] Arizona State Tax Commission v. Tucson Gas, Electric Light & Power Co., 55 Ariz. 472, 103 P.2d 467 (1940), opinion modified on other grounds, 55 Ariz. 519, 103 P.2d 955 (1940).

[6] Natural Gas Pipe Line Co. of America v. State Commission of Revenue and Taxation, 155 Kan. 416, 125 P.2d 397, 140 A.L.R. 1341 (1942).

[7] Carpenter v. State Tax Com'r, 58 Del. 425, 210 A.2d 317 (1965).

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C. Interest

§ 431. Interest or premium paid in connection with purchase of bonds

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3503

Income tax laws, although allowing the deduction of interest generally, sometimes expressly deny a deduction on account of interest paid or accrued on indebtedness incurred to purchase or carry obligations, the interest on which is exempt from tax.[1] With respect to nonexempt bonds, an individual purchaser of the bonds is not entitled to deduct a pro rata share of the premium paid for them in computing his or her income tax on the interest received on the bonds.[2]

Footnotes

1 Howard v. Franchise Tax Bd., 243 Cal. App. 2d 482, 52 Cal. Rptr. 547 (2d Dist. 1966).

2 First Nat. Bank of Memphis v. McCanless, 186 Tenn. 1, 207 S.W.2d 1007 (1948); Van Dyke v. City of Milwaukee, 159 Wis. 460, 146 N.W. 812 (1914).

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§ 432. Interest paid to stockholders

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3503

Some statutes, although generally allowing a deduction for interest paid by the taxpayer in computing net income, expressly limit or prohibit a deduction for interest paid by a corporation to its stockholders or members of their families.[1] These statutes have been held constitutional[2] and do not violate either the Equal Protection Clause of the 14th Amendment or a section of a state constitution providing for an equal and uniform rate of taxation.[3] Interest paid to shareholders or members of their family, and which is hence nondeductible under such statutes, may not be deducted as ordinary and necessary expenses.[4]

Footnotes

1 Natural Gas Pipe Line Co. of America v. State Commission of Revenue and Taxation, 155 Kan. 416, 125 P.2d 397, 140 A.L.R. 1341 (1942); Application of Markt & Hammacher Co., 258 A.D. 363, 16 N.Y.S.2d 774 (3d Dep't 1940), order aff'd, 283 N.Y. 691, 28 N.E.2d 412 (1940).

2 People ex rel. Retsoff Mining Co. v. Graves, 255 A.D. 921, 7 N.Y.S.2d 769 (3d Dep't 1938).

3 Natural Gas Pipe Line Co. of America v. State Commission of Revenue and Taxation, 155 Kan. 416, 125 P.2d 397, 140 A.L.R. 1341 (1942).

4 Natural Gas Pipe Line Co. of America v. State Commission of Revenue and Taxation, 155 Kan. 416, 125 P.2d 397, 140 A.L.R. 1341 (1942).

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C. Interest

§ 433. Interest on delinquent taxes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3503

The interest paid or incurred by a taxpayer on account of delinquent or deferred taxes is deductible.[1] Nevertheless, with respect to interest paid on federal income tax deficiency assessments, authority exists both in favor of[2] and against[3] such deductibility.

Footnotes

1 Arizona State Tax Commission v. Phelps Dodge Corporation, 53 Ariz. 252, 88 P.2d 79, 121 A.L.R. 1458 (1939) (interest on delinquent property tax).

2 Howard v. Franchise Tax Bd., 243 Cal. App. 2d 482, 52 Cal. Rptr. 547 (2d Dist. 1966).

3 Kikalos v. C.I.R., 190 F.3d 791 (7th Cir. 1999); Nichols v. Commissioner of Corporations and Taxation, 314 Mass. 285, 50 N.E.2d 76, 147 A.L.R. 830 (1943).

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D. Dividend

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3502

A.L.R. Library

A.L.R. Index, Deductions
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XXIV. Deductions

D. Dividend

§ 434. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3502

A deduction for dividends received by a corporation from a subsidiary in which the corporation owns 80% or more of the outstanding stock, which is an allowable deduction in computing "net earnings" for corporate excise tax purposes, is also an allowable deduction in computing "net operating loss."[1] A statute disallowing interest deductions allocable to one or more classes of income not included in the measure of corporate income and franchise taxes does not apply to intercompany dividends eliminated from income.[2]

Observation:

A tax code may provide that foreign dividends must be subtracted from adjusted income.[3]

Footnotes

1 Southern Ry. Co. v. Taylor, 812 S.W.2d 577 (Tenn. 1991).

2 Apple, Inc. v. Franchise Tax Bd., 199 Cal. App. 4th 1, 132 Cal. Rptr. 3d 401 (1st Dist. 2011), review denied, (Jan. 4,

2012).

[3] World Fuel Services Corp. v. Florida Dept. of Revenue, 23 So. 3d 1293 (Fla. Dist. Ct. App. 3d Dist. 2010).

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West's Key Number Digest

West's Key Number Digest, Taxation 3504, 3522, 3523

A.L.R. Library

A.L.R. Index, Deductions
A.L.R. Index, Excise Taxes
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West's Key Number Digest

West's Key Number Digest, Taxation 3522, 3523

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 227 (Complaint, petition or declaration—For abatement of corporate income-tax assessment—Deduction of federal tax payment erroneously disallowed)

Income tax laws frequently allow the deduction, in computing net income subject to tax, of certain types of taxes paid or accrued by the taxpayer.[1] A deduction of taxes paid is only allowable when the amount paid is for taxes imposed on the person paying it.[2] However, even though liability for the federal excise tax is on the vendor, since it is the vendee who has to pay it, it is he or she who may deduct the amount of such tax from his or her gross income under a statute allowing a deduction for federal taxes.[3]

A statute barring the deduction of expenditures allocable to exempt income has been interpreted to prevent a corporation from deducting federal taxes, the liability for which was incurred prior to the enactment of the state income tax statute but which were paid after such enactment through the federal provisions allowing installment returns.[4]

Footnotes

[1] Sloss v. State, 264 Ala. 680, 89 So. 2d 174 (1956); Clayton & Lambert Mfg. Co. v. Kentucky State Tax Commission,

265 S.W.2d 449 (Ky. 1954); State v. Theo. Hamm Brewing Co., 247 Minn. 486, 78 N.W.2d 664 (1956).
As to the deductibility of interest on delinquent or deferred taxes, see § 433.

[2] Sloss v. State, 264 Ala. 680, 89 So. 2d 174 (1956).

[3] Tiger v. State Tax Commission, 277 S.W.2d 561 (Mo. 1955).

[4] W. Horace Williams Co. v. Cocreham, 214 La. 520, 38 So. 2d 157 (1948).

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§ 436. Income taxes

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West's Key Number Digest

West's Key Number Digest, Taxation 3522, 3523

Since neither the Supremacy Clause[1] of the Federal Constitution nor the 16th Amendmentto the Federal Constitution require that the states allow a deduction for payments of federal income tax,[2] state tax laws in some instances expressly except "income taxes" from the taxes deductible from gross income in computing the state income tax.[3] A state unincorporated business tax[4] and federal "excess profits" taxes[5] are income taxes within such a provision. However, some states provide for a deduction for federal income taxes paid.[6] Under such a statute, "federal income taxes, paid or accrued," means the amount of federal taxes actually paid to the federal government.[7] Some states provide an income tax credit for income taxes payable to other states.[8]

Observation:

Federal income tax is not deductible for state income tax purposes either under a statute allowing simply the deduction of state and local income taxes or under another provision permitting the deduction of ordinary and necessary expenses.[9]

The question of whether, under provisions allowing the deduction of federal income taxes but not providing for multistate taxpayers, such taxes may be deducted, even though the income on which the tax was paid arose out of operations or transactions occurring in another state, has been resolved in favor of deductibility.[10] Federal tax law does not control the extent of a subsidiary corporation's deduction for federal income taxes from state taxes.[11]

Footnotes

1 U.S. Const. Art. VI, cl. 2.

2 Kawitt v. Mahin, 49 Ill. 2d 73, 271 N.E.2d 35 (1971).

3 Clayton & Lambert Mfg. Co. v. Kentucky State Tax Commission, 265 S.W.2d 449 (Ky. 1954).

4 People ex rel. Froelick v. Graves, 259 A.D. 30, 18 N.Y.S.2d 418 (3d Dep't 1940).

5 Tri-State Transit Co. of Louisiana v. Stone, 196 Miss. 23, 16 So. 2d 782, 151 A.L.R. 976 (1944).

6 Kinney Shoe Corp. v. State By and Through Hanson, 552 N.W.2d 788 (N.D. 1996).

7 Kinney Shoe Corp. v. State By and Through Hanson, 552 N.W.2d 788 (N.D. 1996).

8 Boulet v. State Tax Assessor, 626 A.2d 33 (Me. 1993); Brennan v. Director of Revenue, 937 S.W.2d 210 (Mo. 1997).

9 State v. Wisconsin Tax Commission, 170 Wis. 506, 175 N.W. 931 (1920).

10 Clayton & Lambert Mfg. Co. v. Kentucky State Tax Commission, 265 S.W.2d 449 (Ky. 1954).

11 Kinney Shoe Corp. v. State By and Through Hanson, 552 N.W.2d 788 (N.D. 1996).

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E. Taxes

§ 437. Inheritance, estate, succession, and trust taxes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3504, 3522, 3523

In the absence of statutory provisions expressly denying a deduction on account of inheritance, estate, or succession taxes, the amount paid or payable in respect of such taxes is deductible in computing the state income tax of a decedent's estate.[1] Under a statute allowing the deduction of taxes, other than income taxes, imposed by federal or state authority, federal estate taxes[2] and state transfer taxes, due when a transfer of property by will or by the intestate statute occurs,[3] are deductible for purposes of computing income tax on an estate.

Real-estate taxes on a trust's property which exceed the income of such property are deductible from the trust's gross income.[4] However, with regard to nonproductive property, such deductibility has been disallowed.[5]

Footnotes

1 State ex rel. Davis v. State Board of Equalization of Montana, 104 Mont. 52, 64 P.2d 1057, 108 A.L.R. 1397 (1937).

2 People ex rel. Seligman v. Gilchrist, 215 A.D. 166, 213 N.Y.S. 181 (3d Dep't 1926).

3 Home Trust Co. v. Law, 204 A.D. 590, 198 N.Y.S. 710 (3d Dep't 1923), aff'd, 236 N.Y. 607, 142 N.E. 303 (1923).

4 People ex rel. Field v. Gilchrist, 240 N.Y. 301, 148 N.E. 530 (1925).

5 State v. Widule, 166 Wis. 113, 163 N.W. 648 (1917).

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F. Losses

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3501, 3511, 3514

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A.L.R. Index, Taxes
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West's Key Number Digest

West's Key Number Digest, Taxation 3501, 3511

A.L.R. Library

State Income Tax Treatment of Intangible Holding Companies, 11 A.L.R.6th 543

Losses incurred in a trade or business[1] or those sustained in transactions entered into for profit[2] are frequently made deductible by statute. Net operating losses are not a taxable event[3] but rather are deductions.[4]

Separate corporate identities of corporate subsidiaries ordinarily preclude a parent corporation from deducting losses sustained by the subsidiaries.[5] A payment of capital assets made by a partnership to a former partner in settlement of his or her claims to a share in the partnership is not a loss incurred in a trade or business and is thus not deductible either from the gross income of the firm or that of any individual member thereof.[6]

A state law does not violate the uniformity clause of the state constitution by allowing stock pickers or day traders to deduct losses from gains or payouts while denying any deduction for the losses of recreational gamblers.[7] Further, the amount of losses incurred in wagering on horse races is not deductible.[8]

Footnotes

[1] Tupelo Garment Co. of Tupelo v. State Tax Commission, 178 Miss. 730, 173 So. 656 (1937); People ex rel. Speyer v. Gilchrist, 219 A.D. 155, 219 N.Y.S. 406 (3d Dep't 1927), aff'd, 245 N.Y. 609, 157 N.E. 878 (1927); In re Terminal Land Co., 1942 OK 407, 191 Okla. 549, 131 P.2d 743 (1942).
As to carryover and carryback of losses into other years, see §§ 462, 492.

[2] People ex rel. Konigswald v. Wendell, 198 A.D. 956, 189 N.Y.S. 550 (3d Dep't 1921), aff'd, 233 N.Y. 618, 135 N.E. 942 (1922); In re Terminal Land Co., 1942 OK 407, 191 Okla. 549, 131 P.2d 743 (1942).
As to losses resulting from the sale or exchange of capital assets, see §§ 457 to 469.
As to the deduction of losses as an ordinary and necessary business expense, see §§ 425, 428.

[3] Fadner v. Commissioner of Revenue Services, 281 Conn. 719, 917 A.2d 540 (2007).

[4] Fadner v. Commissioner of Revenue Services, 281 Conn. 719, 917 A.2d 540 (2007).

[5] Purcell Co., Inc. v. Mississippi State Tax Com'n, 569 So. 2d 297 (Miss. 1990).

[6] People ex rel. Speyer v. Gilchrist, 219 A.D. 155, 219 N.Y.S. 406 (3d Dep't 1927), aff'd, 245 N.Y. 609, 157 N.E. 878 (1927).

[7] Byrd v. Hamer, 408 Ill. App. 3d 467, 347 Ill. Dec. 825, 943 N.E.2d 115 (2d Dist. 2011), appeal denied, 351 Ill. Dec. 1, 949 N.E.2d 1096 (Ill. 2011).

[8] People ex rel. Konigswald v. Wendell, 198 A.D. 956, 189 N.Y.S. 550 (3d Dep't 1921), aff'd, 233 N.Y. 618, 135 N.E. 942 (1922).

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Part Six. Income Taxes

XXIV. Deductions

F. Losses

§ 439. Vicarious deductibility

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3501, 3511

A.L.R. Library

State Income Tax Treatment of Intangible Holding Companies, 11 A.L.R.6th 543

A successor corporation is not entitled to deduct the loss of a predecessor partnership.[1]

A corporation resulting from a statutory merger is not the same taxable entity as the separate corporations that were merged so that it cannot deduct the carryover losses of the merged corporations.[2] However, the right to deduct has been allowed where the transaction was a mere matter of form, and the new or surviving corporation was for all practical purposes the same as the old, continuing the business of its predecessor.[3] On this question, material factors include:[4]

- what kind of business the corporations did before the merger
- whether they were competitors in the same field
- whether they engaged in business in the same or different territories
- whether the same character of business was conducted after the merger and in the same territories in which the constituent companies had operated prior to the merger
- the relative net worth of the different corporations on the date of the merger

• what part of the survivor's income was earned prior to the merger

A statute prohibiting an acquiring corporation from using the preacquisition losses of the acquired corporation does not prohibit the acquired corporation from taking advantage of loss carryovers incurred prior to the date of acquisition in order to offset its own as opposed to the acquiring corporation's income.[5] However, the filing of consolidated returns by an acquiring corporation does not transform deductions by the acquired corporations into those of the acquiring corporation.[6]

Footnotes

1 State v. L. & A. Contracting Co., 241 Miss. 783, 133 So. 2d 546 (1961).

2 Richard's Auto City, Inc. v. Director, Div. of Taxation, 140 N.J. 523, 659 A.2d 1360 (1995); Fall River Canning Co. v. Wisconsin Dept. of Taxation, 3 Wis. 2d 632, 89 N.W.2d 203 (1958).

3 Good Will Distributors (Northern), Inc. v. Shaw, 247 N.C. 157, 100 S.E.2d 334 (1957).

4 Good Will Distributors (Northern), Inc. v. Shaw, 247 N.C. 157, 100 S.E.2d 334 (1957).

5 Savage Industries, Inc. v. Utah State Tax Com'n, 811 P.2d 664 (Utah 1991).

6 Savage Industries, Inc. v. Utah State Tax Com'n, 811 P.2d 664 (Utah 1991).

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XXIV. Deductions

F. Losses

§ 440. Losses as director, officer, or stockholder of corporation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3501, 3511

A.L.R. Library

State Income Tax Treatment of Intangible Holding Companies, 11 A.L.R.6th 543

An individual who, in his or her capacity as a corporate officer, makes unauthorized use of corporate funds for speculation in wheat futures may not deduct, as a loss resulting from the operation of an investment business, his or her loss in being required to make restitution to the corporation.[1] Voluntary contributions by stockholders to aid a corporation in financial difficulty ordinarily constitute an additional investment by them in the capital of the corporation, and are not deductible by the stockholders as losses, in computing their income tax for the year in which the contributions are made.[2] Depreciation in the value of stock caused by a distribution of dividends is also not a deductible loss.[3]

Under the tax benefit rule, taxpayers are not entitled to claim a deduction for worthless stock in a subchapter S corporation of which one taxpayer is a shareholder when the taxpayers previously avoided paying state capital gains taxes as a result of those same passed-through losses.[4]

Footnotes

[1] State Tax Commission v. Fagerberg, 59 Ariz. 29, 122 P.2d 212 (1942).

[2] Foreman Mfg. Co. v. Johnson, 261 N.C. 504, 135 S.E.2d 205 (1964).

[3] Van Dyke v. City of Milwaukee, 159 Wis. 460, 146 N.W. 812 (1914).

[4] Berkley v. Gavin, 253 Conn. 761, 756 A.2d 248 (2000).

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XXIV. Deductions

F. Losses

§ 441. Bad debts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3514

A.L.R. Library

State Income Tax Treatment of Intangible Holding Companies, 11 A.L.R.6th 543

Trial Strategy

Business Bad Debt, 5 Am. Jur. Proof of Facts 2d 89

To the extent that a debt is determined to be worthless within a taxable year, and is charged off in that year, it is deductible as a bad debt therein.[1] Circumstances surrounding the advancement of money should be studied to determine whether a bona fide debt ever existed, loans to members of the family inviting particularly close scrutiny.[2] The advancement of money does not show that a debt was incurred if there was no desire, hope, or expectation that the advances would be repaid.[3]

The ascertainment of the worthlessness of a debt must represent a definite determination made before a taxpayer's books are closed and must not be a matter of estimation or approximation.[4] Where a debt is claimed as a deduction from gross income on the ground that it was ascertained to be worthless and charged off within the taxable year, the burden is upon the taxpayer, if the deduction is questioned, to establish such grounds.[5] The mere statement by an income taxpayer on his or her income tax

return, or in a hearing, that he or she ascertained a debt to be worthless, standing alone, is insufficient, if challenged, to entitle the taxpayer to a deduction as a matter of right.[6]

Footnotes

1 Bush v. State Tax Commission, 244 Or. 261, 416 P.2d 1021 (1966).

2 Bush v. State Tax Commission, 244 Or. 261, 416 P.2d 1021 (1966).

3 Bush v. State Tax Commission, 244 Or. 261, 416 P.2d 1021 (1966).

4 Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682 (1950).

5 Green v. Oklahoma Tax Com'n, 1940 OK 360, 188 Okla. 168, 107 P.2d 180 (1940).

6 Green v. Oklahoma Tax Com'n, 1940 OK 360, 188 Okla. 168, 107 P.2d 180 (1940).

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XXIV. Deductions

G. Depreciation, Depletion, and Exhaustion

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3516

A.L.R. Library

A.L.R. Index, Deductions
A.L.R. Index, Income Tax
A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 3516

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XXIV. Deductions

G. Depreciation, Depletion, and Exhaustion

§ 442. Depreciation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3516

While income tax statutes sometimes merely specify that "reasonable allowances" shall be made for a deduction for depreciation,[1] it is normally required that depreciation be calculated on the basis of the cost of the property involved.[2] Thus, the cost of a patent is depreciable over the full span of the patent period.[3] Additionally, since the automatic transfer or investing of ownership of corporate assets in a stockholder upon dissolution is not a sale to the stockholder, the stockholder is bound to the book value of such assets for purposes of computing his or her depreciation deduction thereon.[4]

Of course, depreciation must, in order for it to be deductible from gross income, be on property integrated or connected with the business of the taxpayer claiming the deduction.[5] Likewise, where a state tax agency was not a party to federal tax proceedings in which there was a determination of the basis of certain depreciable property, the state agency is not bound by the determination.[6] The method of depreciation that a taxpayer uses does not establish the remaining useful life of the asset being depreciated.[7]

Interest received on bonds may not be claimed as a depreciation deduction to offset the premium paid on the bonds.[8]

Footnotes

1 Wisconsin Box Co. v. Wisconsin Tax Commission, 198 Wis. 439, 224 N.W. 483 (1929).

2 State v. Merchants Nat. Bank of Mobile, 230 Ala. 661, 162 So. 270 (1935); In re Taxes Waialua Agricultural Co., 30 Haw. 755, 1929 WL 3006 (1929); Read Phosphate Co. v. South Carolina Tax Com'n, 169 S.C. 314, 168 S.E. 722 (1933).

[3] Industrial Clutch Co. v. Wisconsin Dept. of Taxation, 241 Wis. 518, 6 N.W.2d 645 (1942).

[4] Urschel v. Stone, 198 Miss. 105, 21 So. 2d 466 (1945).

[5] People ex rel. Voelkel v. Browne, 268 A.D. 596, 52 N.Y.S.2d 822 (3d Dep't 1944), order aff'd, 294 N.Y. 834, 62 N.E.2d 390 (1945).

[6] Industrial Clutch Co. v. Wisconsin Dept. of Taxation, 241 Wis. 518, 6 N.W.2d 645 (1942).

[7] Miller v. Department of Revenue, State of Or., 327 Or. 129, 958 P.2d 833 (1998).

[8] Van Dyke v. City of Milwaukee, 159 Wis. 460, 146 N.W. 812 (1914).

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Part Six. Income Taxes

XXIV. Deductions

G. Depreciation, Depletion, and Exhaustion

§ 443. Depletion and exhaustion

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3516

While there exist state statutes entitling a taxpayer to a deduction for depletion of natural resources, such as minerals, oil, gas, and timber, in terms of either a reasonable amount[1] or a given percentage of gross income,[2] a statute granting a deduction for depreciation does not of itself yield a depletion deduction.[3] A taxpayer is not entitled as a matter of constitutional right to a depletion allowance.[4]

Authority exists both for[5] and against[6] the proposition that in order for the depletion deduction to be taken, there must be actual production of resources from the land. The depletion allowance is limited to natural deposits and does not include a "tailings" dump deposited on the surface of the land consisting of residue of ore that has been severed and milled.[7]

Footnotes

1 Idaho Portland Cement Co. v. Neill, 83 Idaho 66, 357 P.2d 654 (1960); Georgia Cypress Co. v. South Carolina Tax Com'n, 201 S.C. 213, 22 S.E.2d 419 (1942).

2 Allen v. Franchise Tax Bd., 39 Cal. 2d 109, 245 P.2d 297 (1952); Producers Pipe & Supply Co. v. State Commission of Revenue and Taxation, 179 Kan. 231, 293 P.2d 1003 (1956); Daube v. Oklahoma Tax Com'n, 1957 OK 55, 310 P.2d 768 (Okla. 1957).

3 Pfister Land Co. v. City of Milwaukee, 166 Wis. 223, 165 N.W. 23 (1917).

4 Fullerton Oil Co. v. Johnson, 2 Cal. 2d 162, 39 P.2d 796 (1934).

[5] In re Levy, 1939 OK 355, 185 Okla. 477, 94 P.2d 537 (1939).

[6] Featherstone v. Bureau of Revenue, 58 N.M. 557, 273 P.2d 752 (1954).

[7] Lawyers Lead & Zinc Co. v. Tax Com'n, 1941 OK 111, 188 Okla. 590, 111 P.2d 1085 (1941).

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G. Depreciation, Depletion, and Exhaustion

§ 444. Determination of amount of depletion allowance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3516

The discretion of a state legislature in setting a depletion deduction percentage is broad and is not to be tampered with by the judiciary because what is involved is highly technical and represents at best an approximation.[1] Moreover, since the allowance of a depletion deduction is an act of legislative grace, it is immaterial that the provision for percentage depletion may produce unequal results.[2] With regard to statutes allowing a reasonable deduction for depletion or exhaustion, the issue of what is reasonable is a question of fact that may be resolved by the introduction of persuasive evidence that a taxpayer followed a method for determining a depletion allowance adopted by the Internal Revenue Service.[3] However, a valuation placed upon a natural resource by federal income tax authorities is by no means conclusive.[4]

Where a statute provides that a depletion allowance shall not exceed a given percent of the taxpayer's net income without allowance for depletion, the term "net income" means what is left after every allowable deductible item (including federal and state income taxes) except depletion is deducted from gross income.[5] Since the automatic transfer or investing of ownership of corporate assets in a stockholder upon dissolution is not a sale to the stockholder, the stockholder is bound to the book value of such assets for the purposes of computing his or her depletion deduction thereon.[6]

Footnotes

1 Fullerton Oil Co. v. Johnson, 2 Cal. 2d 162, 39 P.2d 796 (1934).

2 Producers Pipe & Supply Co. v. State Commission of Revenue and Taxation, 179 Kan. 231, 293 P.2d 1003 (1956); Daube v. Oklahoma Tax Com'n, 1957 OK 55, 310 P.2d 768 (Okla. 1957).
As to deductions as a matter of legislative grace, generally, see § 422.

[3] Carter v. Phillips, 1923 OK 69, 88 Okla. 202, 212 P. 747 (1923).

[4] Wisconsin Box Co. v. Wisconsin Tax Commission, 198 Wis. 439, 224 N.W. 483 (1929).

[5] Producers Pipe & Supply Co. v. State Commission of Revenue and Taxation, 179 Kan. 231, 293 P.2d 1003 (1956); Daube v. Oklahoma Tax Com'n, 1957 OK 55, 310 P.2d 768 (Okla. 1957).

[6] Urschel v. Stone, 198 Miss. 105, 21 So. 2d 466 (1945).

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XXIV. Deductions

H. Charitable Contributions

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3501

A.L.R. Library

A.L.R. Index, Deductions
A.L.R. Index, Income Tax
A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 3501

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XXIV. Deductions

H. Charitable Contributions

§ 445. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3501

Income tax laws frequently allow a deduction, in computing income tax, on account of contributions or gifts made to various religious, charitable, and educational organizations.[1] Deductions and credits are legitimate tools by which the government can ameliorate the tax burden while implementing social and economic goals.[2] When a contribution is made in property rather than in cash, the amount of the deduction is the fair market value of the property at the time of the gift.[3] Moreover, under a statute allowing a deduction for charitable contributions which made no distinction between contributions of money and contributions of property, a rule promulgated by a state tax agency that where a gift is other than money, the basis for calculation of the amount of the gift shall be the cost of the property is invalid as being repugnant to the clear meaning of the statute.[4]

Under a statute providing a deduction for contributions "to" a charitable corporation, a contribution "for the use of" a charitable corporation is not deductible.[5] A deduction for charitable contributions is to be applied against the consolidated income of affiliated companies on a consolidated tax return.[6]

Footnotes

1 Wiscassett Mills Co. v. Shaw, 235 N.C. 14, 68 S.E.2d 816 (1952); Wisconsin Dept. of Taxation v. Belle City Malleable Iron Co., 258 Wis. 101, 45 N.W.2d 68 (1950).

2 Kotterman v. Killian, 193 Ariz. 273, 972 P.2d 606, 132 Ed. Law Rep. 938 (1999).

3 Wiscassett Mills Co. v. Shaw, 235 N.C. 14, 68 S.E.2d 816 (1952).

[4] Crosby v. Barr, 198 So. 2d 571 (Miss. 1967).

[5] Schmitt v. State Tax Commission, 234 Or. 455, 383 P.2d 97 (1963).

[6] Central & Southern Companies, Inc. v. Weiss, 339 Ark. 76, 3 S.W.3d 294 (1999).

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H. Charitable Contributions

§ 446. Trusts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3501

Some statutes permit the deduction, in computing the income tax of a trust, of any part of its gross income which is during the taxable year "permanently set aside to be used exclusively for,"[1] or "is paid to or held for," charitable purposes pursuant to the instrument creating the trust.[2] The term "pursuant to" in a statute of this type does not necessitate that the name of the donee be specified in the instrument.[3] However, it is required under such a statute that the amount of the donation be definitively calculable[4] and that the distribution of income be directed by language in the pertinent instrument itself and no place else.[5]

Footnotes

1 Coulter v. Wisconsin Dept. of Taxation, 259 Wis. 115, 47 N.W.2d 303 (1951).

2 City Bank Farmers Trust Co. v. Graves, 259 A.D. 68, 18 N.Y.S.2d 596 (3d Dep't 1940), order aff'd, 287 N.Y. 547, 38 N.E.2d 221 (1941).

3 City Bank Farmers Trust Co. v. Graves, 259 A.D. 68, 18 N.Y.S.2d 596 (3d Dep't 1940), order aff'd, 287 N.Y. 547, 38 N.E.2d 221 (1941).

4 Coulter v. Wisconsin Dept. of Taxation, 259 Wis. 115, 47 N.W.2d 303 (1951).

5 City Bank Farmers Trust Co. v. Graves, 259 A.D. 68, 18 N.Y.S.2d 596 (3d Dep't 1940), order aff'd, 287 N.Y. 547, 38 N.E.2d 221 (1941).

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I. Miscellaneous Personal Deductions

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Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3506, 3519, 3520

A.L.R. Library

A.L.R. Index, Deductions
A.L.R. Index, Income Tax
A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 3432, 3506, 3519, 3520

Trial Strategy

Deductibility of Travel Expenses, 44 Am. Jur. Proof of Facts 2d 579 §§ 25 to 29

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 226

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XXIV. Deductions

I. Miscellaneous Personal Deductions

§ 447. Personal exemptions; generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3506, 3519, 3520

Income tax laws usually allow a specified deduction, often termed a ''personal exemption,''[1] or considered a credit against net income,[2] on account of each person dependent on an individual taxpayer for support.

However, a state system of providing income tax benefits to parents of non-public-school children by allowing deductions of specific amounts from adjusted gross income in calculating their state income tax is invalid under the First Amendment's Establishment Clause as insufficiently restricted to assure that it will not have the impermissible effect of advancing the sectarian activities of religious schools.[3]

On the other hand, a statute allowing state taxpayers, in computing their state income tax, to deduct expenses incurred in providing "tuition, textbooks and transportation" for their children attending elementary or secondary school does not violate the Establishment Clause, notwithstanding statistical analysis showing that the statute's application primarily benefits religious institutions and notwithstanding the fact that state officials must determine whether particular textbooks qualify for the deduction, where the State's efforts to assist parents in meeting the rising cost of education serves the secular purpose of ensuring that the state's citizenry is well educated, and the deduction is available to all parents, including those whose children attend public schools and those whose children attend nonsectarian private schools.[4] Likewise, the availability, to a broad class of recipients, of a state tax credit for donations to school tuition organizations supports the finding that the credit does not have the primary effect of advancing religion because any individual, not just a parent, can donate to the scholarship program.[5]

Footnotes

[1] State Treasurer v. Ellis, 115 Colo. 154, 170 P.2d 283 (1946); Kuhn v. Department of Treasury, 384 Mich. 378, 183 N.W.2d 796 (1971); In re Opinion of the Justices, 84 N.H. 557, 84 N.H. 559, 149 A. 321 (1930).

[2] State ex rel. Haworth v. Berntsen, 68 Idaho 539, 200 P.2d 1007 (1948).

[3] Public Funds for Public Schools of New Jersey v. Byrne, 590 F.2d 514 (3d Cir. 1979), judgment aff'd, 442 U.S. 907, 99 S. Ct. 2818, 61 L. Ed. 2d 273 (1979) and judgment aff'd, 442 U.S. 907, 99 S. Ct. 2818, 61 L. Ed. 2d 273 (1979).

[4] Mueller v. Allen, 463 U.S. 388, 103 S. Ct. 3062, 77 L. Ed. 2d 721, 11 Ed. Law Rep. 763 (1983).

[5] Kotterman v. Killian, 193 Ariz. 273, 972 P.2d 606, 132 Ed. Law Rep. 938 (1999).

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XXIV. Deductions

I. Miscellaneous Personal Deductions

§ 448. Traveling expenses; moving expenses

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3506

Trial Strategy

Deductibility of Travel Expenses, 44 Am. Jur. Proof of Facts 2d 579 §§ 25 to 29

Some statutes explicitly allow traveling expenses as a deduction from net income, including the actual and necessary amounts expended for meals and lodging while away from home in the pursuit of a trade or business.[1] Under such a statute, the traveling expenses of a construction electrician, who had an established tax home, in traveling daily from his home to construction sites and vice versa for several installation jobs for time periods of as long as seven months have been held deductible.[2] The traveling expenses of a circuit court judge in holding court away from his or her home county also are deductible to the extent that they exceed the statutory allowance that he or she receives for this purpose.[3]

An individual is not entitled to a deduction from gross income for moving expenses incurred as an incident to the commencement of new employment under a statute providing a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income.[4]

Footnotes

[1] Carlson v. Idaho State Tax Commissioner, 80 Idaho 337, 329 P.2d 1019 (1958).

[2] Carlson v. Idaho State Tax Commissioner, 80 Idaho 337, 329 P.2d 1019 (1958).

[3] In re Breuer's Income Tax, 354 Mo. 578, 190 S.W.2d 248 (1945).

[4] Kahn v. Arizona State Tax Commission, 16 Ariz. App. 17, 490 P.2d 846 (Div. 2 1971).

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Part Six. Income Taxes

XXIV. Deductions

I. Miscellaneous Personal Deductions

§ 449. Medical expenses

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3506

Medical expenses are often allowed by statute as a deductible item in the computation of net income[1] although sometimes there is imposed some type of limitation on the amount of the deduction.[2] Where such a statute is silent as to the effect of reimbursement by insurance, the deduction cannot be limited to expenditures which were not reimbursed,[3] and an administrative regulation providing a limitation to that effect is invalid.[4]

Footnotes

1 Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588 (1971).

2 Taylor v. Neill, 80 Idaho 90, 326 P.2d 391 (1958); Goodwin v. State Tax Commission, 286 A.D. 694, 146 N.Y.S.2d 172 (3d Dep't 1955), order aff'd, 1 N.Y.2d 680, 150 N.Y.S.2d 203, 133 N.E.2d 711 (1956).

3 Taylor v. Neill, 80 Idaho 90, 326 P.2d 391 (1958).

4 Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588 (1971).

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XXIV. Deductions

I. Miscellaneous Personal Deductions

§ 450. Alimony payments

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3506

Forms

Am. Jur. Pleading and Practice Forms, State and Local Taxation § 226 (Complaint, petition or declaration—For refund of personal income tax paid under protest—Deduction of alimony payments to nonresident former spouse erroneously disallowed)

In some states, periodic alimony[1] and alimony awards[2] are treated as taxable income to the party receiving it. Thus, some statutes provide that alimony payments by an individual to his or her former spouse pursuant to a decree of divorce or of separate maintenance are deductible from the payor's gross income.[3] Under such a statute, alimony payments by the paying spouse may be deducted from his or her gross income for state income tax purposes even though the receiving spouse is a nonresident.[4]

Observation:

Payments from a property settlement agreement may be characterized as "alimony" for the purposes of income tax statutes even though those payments are required to continue if one of the parties died.[5]

Footnotes

1 Rose v. Rose, 70 So. 3d 429 (Ala. Civ. App. 2011).

2 C.D.L. v. M.M.L., 72 Mass. App. Ct. 146, 889 N.E.2d 63 (2008).

3 Francis v. McColgan, 107 Cal. App. 2d 823, 238 P.2d 70 (2d Dist. 1951).

4 Francis v. McColgan, 107 Cal. App. 2d 823, 238 P.2d 70 (2d Dist. 1951).

5 McGoldrick v. Director, Div. of Taxation, 2009 WL 2016082 (N.J. Super. Ct. App. Div. 2009).

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Part Six. Income Taxes

XXV. Credits Against Tax Liability

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

A.L.R. Library

A.L.R. Index, Excise Taxes
A.L.R. Index, Income Tax
A.L.R. Index, Personal Property Tax
A.L.R. Index, Taxes
West's A.L.R. Digest, Taxation 3432, 3517

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Part Six. Income Taxes

XXV. Credits Against Tax Liability

§ 451. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

Tax credits are legitimate tools by which a government can ameliorate the tax burden while implementing social and economic goals.[1] However, tax credits are obtained by legislative grace and not by right.[2] Thus, courts construe tax statutes strictly against tax credits[3] and in favor of the taxing authority.[4] However, an unduly strict interpretation of a credit statute in order to add a few dollars to the state treasury is not fitting where the practical effect is double taxation.[5]

CUMULATIVE SUPPLEMENT

Cases:

Developer's application for low income housing tax credits complied with the requirements of housing agency's request for application (RFA), and thus developer was eligible to receive such credits, even though the development location point (DLP) that developer used to determine proposed development's proximity to services needed by tenants was located on the smaller of two parcels making up the development; developer represented that it intended to pursue a 'clustering' approach, under which a majority of the total number of units permitted on its two parcels could be placed on the smaller parcel, and nothing in the RFA required such approach to have been approved at the application stage. Fla. Admin. Code Ann. R. 67-48.002(33), 67-48.002(105). Brownsville Manor, LP v. Redding Development Partners, LLC, 224 So. 3d 891 (Fla. 1st DCA 2017).

[END OF SUPPLEMENT]

Footnotes

1 Kotterman v. Killian, 193 Ariz. 273, 972 P.2d 606, 132 Ed. Law Rep. 938 (1999).

2 Watts v. Arizona Dept. of Revenue, 221 Ariz. 97, 210 P.3d 1268 (Ct. App. Div. 1 2009); Boulet v. State Tax Assessor, 626 A.2d 33 (Me. 1993); Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957).

3 Watts v. Arizona Dept. of Revenue, 221 Ariz. 97, 210 P.3d 1268 (Ct. App. Div. 1 2009); Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957).

4 Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957).

5 Henley v. Franchise Tax Bd., 122 Cal. App. 2d 1, 264 P.2d 179 (2d Dist. 1953).
As to credits to avoid double taxation, see §§ 452, 453, 456.

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Part Six. Income Taxes

XXV. Credits Against Tax Liability

§ 452. Purposes; taxes paid

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

In some jurisdictions, credits against income tax due are allowed for the taxpayer's—
— support of certain dependents[1]
— contributions to charity[2] or scholarships[3]
— expenditures on pollution control equipment.[4]
— placement into service of qualified manufacturing and productive equipment within specified zones or areas.[5]
Further, credits are frequently allowed by statute to prevent or alleviate the burden of double taxation[6] although nondiscriminatory double taxation is not necessarily unconstitutional.[7]

A statute may allow for taxpayers to carry an unused credit forward into succeeding tax years.[8]

Footnotes

1 Com. ex rel. Allphin v. Sandmann, 280 S.W.2d 155 (Ky. 1955).

2 Patrick Henry Schools, Inc. v. Oxford, 215 Ga. 399, 110 S.E.2d 632 (1959).

3 Green v. Garriott, 221 Ariz. 404, 212 P.3d 96, 246 Ed. Law Rep. 1014 (Ct. App. Div. 1 2009), as amended, (Apr. 15, 2009).

4 Enterprise Leasing Co. of Phoenix v. Arizona Dept. of Revenue, 221 Ariz. 123, 211 P.3d 1 (Ct. App. Div. 1 2008).

5 SCANA Corp. v. South Carolina Dept. of Revenue, 384 S.C. 388, 683 S.E.2d 468 (2009).

6 State v. Robinson Land & Lumber Co. of Ala., 262 Ala. 146, 77 So. 2d 641 (1954); Whittell v. Franchise Tax Bd., 231

Cal. App. 2d 278, 41 Cal. Rptr. 673 (1st Dist. 1964); In re Barton-Dobenin, 269 Kan. 851, 9 P.3d 9 (2000); Mannino v. Director, Div. of Taxation, 24 N.J. Tax 433, 2009 WL 2151837 (2009); Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957); Tarrant v. Department of Taxes, 169 Vt. 189, 733 A.2d 733 (1999).
The resident tax credit is available to New Jersey residents for any income tax or wage tax imposed by another State with respect to income which is also subject to tax by New Jersey. Vassilidze v. Director, Div. of Taxation, 24 N.J. Tax 278, 2008 WL 5539677 (2008).
As to the credit for taxes paid, generally, see §§ 453, 456.

7 §§ 26, 371.

8 § 484.

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XXV. Credits Against Tax Liability

§ 453. Taxes paid

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

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Income tax: Constitutionality, construction, and application of statutory provisions allowing credit for income tax paid to another state or country, 12 A.L.R.2d 359

Credits are frequently allowed by statute to prevent or alleviate the burden of double taxation.[1] However, a resident taxpayer's entitlement to a tax credit for taxes paid to another state does not arise until the tax is actually paid to the other state.[2] A tax is "imposed" by a foreign jurisdiction within the meaning of a resident income tax credit statute if the foreign levy is required to be paid under a duly enacted statute, regulation, or other exercise of governmental authority.[3] The voluntary payment of a tax where no law requires such a payment does not constitute the imposition of that tax pursuant to a resident income tax credit statute.[4]

A statute allowing a credit for the payment of tax on net income has been interpreted to permit the taking of a credit for income tax paid by the trustees of a foreign trust to a foreign country.[5] However, a "franchise tax" imposed "upon the taxable income" of unincorporated businesses for the privilege of carrying on business was held not to be a net income tax for which a credit was allowed.[6] Moreover, a statute providing a credit for the amount of income tax actually paid by a resident to any other state or territory on account of business transacted or property held without the taxing state does not yield a credit for the payment to a foreign state of a corporate excise tax on net earnings.[7] The fact that a state statute allows a tax credit only for net income tax payments made outside the state and does not yield such a benefit for the payment of gross income taxes does not constitute an unconstitutional classification.[8]

CUMULATIVE SUPPLEMENT

Cases:

In general, statute relating to a credit against state income tax for similar taxes paid by an individual taxpayer to other states is designed to ensure that state receives, at a minimum, the state income tax due on the taxpayer's income that is attributable to the state, regardless of the another state's method or rate of taxation. West's Ann.Md.Code, Tax–General, § 10–703(a). Maryland State Comptroller of Treasury v. Wynne, 431 Md. 147, 64 A.3d 453 (2013).

[END OF SUPPLEMENT]

Footnotes

1 § 452.

2 Neer v. State ex rel. Oklahoma Tax Com'n, 1999 OK 41, 982 P.2d 1071 (Okla. 1999), as corrected, (June 4, 1999).

3 Vassilidze v. Director, Div. of Taxation, 24 N.J. Tax 278, 2008 WL 5539677 (2008).

4 Vassilidze v. Director, Div. of Taxation, 24 N.J. Tax 278, 2008 WL 5539677 (2008).

5 Burgess v. State, 71 Cal. App. 2d 412, 162 P.2d 855 (2d Dist. 1945).

6 Gardella v. Comptroller of Md., 213 Md. 1, 130 A.2d 752 (1957).

7 State v. Algernon Blair, Inc., 285 Ala. 44, 228 So. 2d 803 (1969).

8 Crocker-Anglo Nat. Bank v. Franchise Tax Bd., 179 Cal. App. 2d 591, 3 Cal. Rptr. 906 (1st Dist. 1960); Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957).

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XXV. Credits Against Tax Liability

§ 454. Taxes paid to governmental subdivision of taxing state

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

In some states, credits are allowed for taxes paid to a governmental entity within the taxing state.[1]

Footnotes

[1] Warm Springs Lumber Co. v. Horn, 217 Or. 219, 342 P.2d 143 (1959);
Oconto Co. v. Wisconsin Tax Commission, 193 Wis. 488, 214 N.W. 445 (1927).

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XXV. Credits Against Tax Liability

§ 455. Dividends

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

In states in which a credit is provided for taxes paid outside the state on net income, a foreign tax on dividends is not a tax on net income and hence is not creditable.[1]

Footnotes

[1] Crocker-Anglo Nat. Bank v. Franchise Tax Bd., 179 Cal. App. 2d 591, 3 Cal. Rptr. 906 (1st Dist. 1960); Keyes v. Chambers, 209 Or. 640, 307 P.2d 498 (1957).

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XXV. Credits Against Tax Liability

§ 456. Constitutional issues

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3432, 3517

A statute creating a state income tax credit for scholarship contributions by corporations does not violate a state constitutional provision prohibiting public money from being appropriated for or applied to any religious worship, exercise, or instruction or to the support of any religious establishment.[1] A state legislature also does not violate a state constitution's separation-of-powers provision when it retroactively amends a statute to provide that an income tax credit for pollution control equipment does not apply to motor vehicles where the statute does not retroactively overrule a court decision.[2]

Observation:

The income tax credit given to residents who pay income taxes to other states, and the resulting tax, is not a tax directly levied on foreign commerce, for purposes of the Foreign Commerce Clause,[3] but rather is levied on a resident individual to pay for services that the resident receives from the State.[4]

Footnotes

[1] Green v. Garriott, 221 Ariz. 404, 212 P.3d 96, 246 Ed. Law Rep. 1014 (Ct. App. Div. 1 2009), as amended, (Apr. 15, 2009).

[2] Enterprise Leasing Co. of Phoenix v. Arizona Dept. of Revenue, 221 Ariz. 123, 211 P.3d 1 (Ct. App. Div. 1 2008).

[3] U.S. Const. Art. I, § 8, cl. 3.

[4] In re Barton-Dobenin, 269 Kan. 851, 9 P.3d 9 (2000).
As to such credits, see §§ 453, 456.

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

A. Capital Gain or Loss

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

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A.L.R. Index, Capital Gain or Loss
A.L.R. Index, Income Tax
A.L.R. Index, Taxes
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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

A. Capital Gain or Loss

§ 457. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

Subject to various limitations and exceptions, the gain or loss resulting from the disposition or conversion of property is usually recognized for income tax purposes.[1] Thus, a corporation's gain from the sale of corporate stock, which was deemed a sale of assets, constituted "business earnings" and therefore was apportionable in a corporation's tax base for purposes of assessing state excise tax.[2] Whether the disposition involves the sale, exchange, or conversion of capital assets is sometimes significant since under the various state income tax statutes, the resulting income may be exempt from taxation[3] or may be taxed at a lower rate or, if a loss, may be offset only against capital gains.

Some statutes specifically provide that a multistate taxpayer may allocate his or her capital gains and losses,[4] or simply his or her capital gains,[5] according to which state they are attributable.

Footnotes

1 § 384.

2 Newell Window Furnishing, Inc. v. Johnson, 311 S.W.3d 441 (Tenn. Ct. App. 2008).

3 § 384.

4 Western Natural Gas Co. v. McDonald, 202 Kan. 98, 446 P.2d 781 (1968).

5 Com. v. Scott Paper Co., 425 Pa. 444, 228 A.2d 904 (1967).

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XXVI. Gain or Loss on Disposition or Conversion of Property

A. Capital Gain or Loss

§ 458. What is a capital asset

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

By statute, a ''capital asset'' has been defined to include all property of a taxpayer, whether or not connected with his or her trade or business, except:[1]

- stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year

- property held by the taxpayer primarily for sale to customers in the ordinary course of his or her trade or business

- property, used in a trade or business, of a character which is subject to the allowance for deductible depreciation

Thus, gain from the sale of property is "business income" if the property was used in the taxpayer's regular business operations.[2] On the other hand, royalties received under an oil and gas lease have been characterized as a capital gain.[3]

Footnotes

1 Schlesinger v. Fontenot, 235 La. 47, 102 So. 2d 488 (1958).

2 Blessing/White, Inc. v. Zehnder, 329 Ill. App. 3d 714, 263 Ill. Dec. 572, 768 N.E.2d 332 (1st Dist. 2002); In re Kroger Co., 270 Kan. 148, 12 P.3d 889 (2000), as corrected, (Dec. 21, 2000); Union Carbide Corp. v. Offerman, 351 N.C. 310, 526 S.E.2d 167 (2000).

3 Western Natural Gas Co. v. McDonald, 202 Kan. 98, 446 P.2d 781 (1968).

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

A. Capital Gain or Loss

§ 459. What is a sale or exchange

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3468, 3469

The capital gain or loss which may be given special treatment for income tax purposes is the gain or loss from "the sale or exchange" of capital assets.[1] The term "exchange," within a statute concerning the treatment of capital gain for income tax purposes, contemplates that each party transfers something to the other.[2] Under a statute imposing a tax on gains for the sale or exchange of land, taxable events are when the owner transfers title to the property or vests title to the property in another person and when the existing option is transferred to a third party by an optionee.[3]

A corporation's gain or loss from the sale of stock of a subsidiary is treated as a business income gain or loss if the corporation and the subsidiary are a unitary business.[4] Many state income tax laws specifically exempt from taxes the transfers of property between spouses which arise incident to divorce.[5]

Observation:

A taxpayer's sale of his or her partnership interest in an accounting partnership did not constitute the sale of a business under a statute providing for an exclusion to capital gains tax.[6]

The cancellation of a lease is not the sale or exchange of a capital asset so that an amount received by a lessee for such cancellation is not a capital gain.[7] Similarly, the surrender of a promissory note by the owner thereof, upon payment in full by

the maker, has been held not to be a "sale or other disposition" of such note by the owner within the meaning of a statute using such language in granting special tax benefits to capital gains.[8] Also, although timber in the hands of a paper corporation is a capital asset, the corporation's cutting of it for use in its own business is not a sale or exchange of a capital asset.[9]

One who has received income from a dividend which was wholly a distribution of capital is not subject to a tax on the amount by which the dividend exceeded the cost of the stock.[10]

Footnotes

1 Schlesinger v. Fontenot, 235 La. 47, 102 So. 2d 488 (1958).

2 Peters v. Department of Revenue, 266 Or. 488, 513 P.2d 752 (1973).

3 Harden v. Vermont Dept. of Taxes, 134 Vt. 122, 352 A.2d 685 (1976).

4 Steiner Corp. v. Auditing Div. of Utah State Tax Com'n, 1999 UT 53, 979 P.2d 357 (Utah 1999).
As to unitary businesses, generally, see §§ 479, 481.

5 Collins v. Oklahoma Tax Commission, 1968 OK 148, 446 P.2d 290 (Okla. 1968); Bettinger v. Bettinger, 183 W. Va. 528, 396 S.E.2d 709, 10 A.L.R.5th 945 (1990); Krueger v. Wisconsin Dept. of Revenue, 124 Wis. 2d 453, 369 N.W.2d 691 (1985).

6 Ranniger v. Iowa Dept. of Revenue and Finance, 746 N.W.2d 267 (Iowa 2008).

7 United Cigar-Whelan Stores Corp. v. District of Columbia, 176 F.2d 952 (D.C. Cir. 1949).

8 King v. Oklahoma Tax Com'n, 1944 OK 247, 194 Okla. 357, 151 P.2d 918 (1944).

9 Com. v. Scott Paper Co., 425 Pa. 444, 228 A.2d 904 (1967).

10 Commissioner of Corporations & Taxation v. Fopiano, 324 Mass. 304, 85 N.E.2d 776 (1949).

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

A. Capital Gain or Loss

§ 460. What is a sale or exchange—Dissolution of corporation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3468, 3469

The surrender of stock by the taxpayer in consideration for his or her share of the corporate assets, on the liquidation of the corporation, has been held to be, in effect, a sale or exchange.[1] Similarly, the distribution of all the assets of a corporation to its sole stockholder in complete and final liquidation of all of his or her stock has been treated as a sale of his or her stock and the entire gain computed and taxed as a capital gain.[2] A stockholder is subject to capital gains tax on any profits that he or she receives on the liquidation of a corporation although they resulted from an increase in the value of its capital assets.[3] A dissolved corporation that sells its assets and distributes the proceeds of sale proportionately to its stockholders is itself subject to income tax on the net gain.[4]

Footnotes

1 Lynch v. State Bd. of Assessment and Review, 228 Iowa 1000, 291 N.W. 161 (1940).
As to statutes providing that no gain or loss shall be recognized if stock or securities in a corporation are exchanged solely in pursuance of a plan of reorganization, see § 464.

2 Oxford v. Carter, 216 Ga. 821, 120 S.E.2d 298 (1961); Follett v. Commissioner of Corporations and Taxation, 267 Mass. 115, 166 N.E. 575, 65 A.L.R. 143 (1929).

3 Follett v. Commissioner of Corporations and Taxation, 267 Mass. 115, 166 N.E. 575, 65 A.L.R. 143 (1929); In re Bellin's Estate, 210 Wis. 670, 247 N.W. 331 (1933) (decided under a statute to that effect).

4 Republic Natural Gas Co. v. Axe, 197 Kan. 91, 415 P.2d 406 (1966).

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469, 3513, 3514

A.L.R. Library

A.L.R. Index, Capital Gain or Loss
A.L.R. Index, Income Tax
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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

§ 461. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469, 3513

It is not unconstitutional to tax income that accrued before the taxpayer became a resident of the taxing state but was realized after he or she became such a resident because gains on the disposition of property are taxable on the theory that all accretions in value are income in the year of realization regardless of when they accrued.[1] Installment payments received for the sale of notes are taxable in the year in which they are received.[2]

Footnotes

1 Sweetland v. Franchise Tax Bd., 192 Cal. App. 2d 316, 13 Cal. Rptr. 432 (1st Dist. 1961).
Income realized by taxpayers who sold a California home while they lived in California and whose gain was realized at that time but not recognized for federal income tax purposes until after they had moved to Oregon was not subject to Oregon income tax. Denniston v. Department of Revenue, 287 Or. 719, 601 P.2d 1258 (1979).

2 Katzenberg v. Comptroller of Treasury, 263 Md. 189, 282 A.2d 465 (1971).

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

§ 462. Exchange of property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3469, 3513

A statute may provide that no gain or loss shall be recognized if property held for productive use in trade, business, or investment is exchanged solely for property of a like kind to be held either for productive use in trade, business, or investment.[1] The theory of such a statute is that the exchange is considered as a mere change of form, the new property simply taking the place of the yielded property.[2] A statute of the type under consideration applies even where the property yielded was situated in another state and at a time when the taxpayer was not a resident of the taxing state.[3] Where the exchanged property is not sold, a court will not be confined to bookkeeping entries in deciding whether the exchange constitutes a taxable event.[4]

Under some statutes, where there are several affiliated corporations, they are regarded as a unified business entity within which transfers of assets are permitted without incurring tax liability, and the latter attaches only when assets are disposed of outside the interrelated group.[5] No taxable gain accrues to partners of a dissolved partnership who receive the entire stock of a new corporation set up through the conveyance to the corporation of the old partnership assets and by the contribution of one partner of additional tangible property.[6]

Exchanges of stock made as a result of a reorganization are treated elsewhere.[7]

Footnotes

1 Grote v. State Tax Commission, 251 Or. 251, 445 P.2d 129 (1968) (holding further that basis of the newly acquired property is the same as that of the property exchanged).

2 Grote v. State Tax Commission, 251 Or. 251, 445 P.2d 129 (1968).

[3] Grote v. State Tax Commission, 251 Or. 251, 445 P.2d 129 (1968).

[4] Commissioner of Corporations and Taxation v. Newton, 324 Mass. 409, 86 N.E.2d 524 (1949).

[5] Bennett Ass'n v. Utah State Tax Commission, 19 Utah 2d 108, 426 P.2d 812 (1967).

[6] Commissioner of Corporations and Taxation v. Newton, 324 Mass. 409, 86 N.E.2d 524 (1949).

[7] § 464.

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

§ 463. Exchange of property—Patents

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3469, 3513

Where an individual taxpayer transfers certain patents to a corporation in exchange for corporate stock, and the stock is not sold, he or she is not subject to capital gains tax.[1] However, a corporate taxpayer that transferred patents to another corporation for stock in that corporation and carries the patents on its books at a certain sum is taxable on such book valuation of the patents, apparently as a capital gain.[2]

CUMULATIVE SUPPLEMENT

Cases:

Taxpayer-husband indirectly controlled corporation to which he transferred patents he held, and, thus, he did not transfer all substantial rights to patents and corporation's royalty payments to married taxpayers, thereby making payments ineligible for capital gain treatment; although husband formally transferred all substantial rights in patents to corporation, and taxpayers owned less than 25 percent of corporation, taxpayers formed corporation with wife's sister and long-time friend, individuals who exercised no independent judgment and acted in their capacities as directors and officers of corporation at husband's direction, which meant that corporation would take practically any action requested by husband, including return of patent rights for no consideration, without regard to corporation's shareholders and without regard to personal interests of sister and friend. 26 U.S.C.A. § 1235(a); 26 C.F.R. § 1.1235–2(b)(1). Cooper v. Commissioner of Internal Revenue, 877 F.3d 1086 (9th Cir. 2017).

[END OF SUPPLEMENT]

Footnotes

[1] Van Heusen v. Commissioner of Corporations and Taxation of Mass., 257 Mass. 488, 154 N.E. 257 (1926).

[2] C. F. Burgess Laboratories v. Conway, 195 Wis. 324, 218 N.W. 172 (1928).

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XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

§ 464. Reorganization

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469, 3513, 3514

A.L.R. Library

Income tax consequences to shareholder of dividend in kind, 56 A.L.R.2d 474

State income tax statutes frequently provide to the effect that no gain or loss shall be recognized if stock or securities in a corporation, a party to a reorganization, are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation.[1] A statute of this type operates in many cases to prevent a taxpayer from deducting a fictitious loss while in other cases, it may relieve him or her from immediate taxation on a paper profit.[2]

In a reorganization, not only must each step be analyzed in order to determine whether a taxable incident has occurred but no intervening step may also be disregarded.[3] The acquisition of the outstanding stock of one corporation by another in exchange for shares of the latter is not a reorganization of the former corporation but is a sale, the resulting gain from which is taxable income.[4] The fact that the parties call a transaction a "reorganization" does not make it so.[5]

A corporate taxpayer's capital gains from a one-time purchase and sale of its stock constituted business earnings, under a functional test, and thus were subject to excise tax.[6] The stock was an integral part of the taxpayer's property that contributed materially to the generation of income in that the transaction was a necessary step in the reorganization of the corporate structure that reduced its expenses and eliminated one level of federal taxation.[7]

Footnotes

[1] Anderson v. Commissioner of Taxation, 253 Minn. 528, 93 N.W.2d 523 (1958); Beard v. South Carolina Tax Commission, 230 S.C. 357, 95 S.E.2d 628 (1956); Walter Alexander Co. v. Wisconsin Tax Commission, 215 Wis. 293, 254 N.W. 544 (1934).

[2] Cudahy v. Wisconsin Tax Commission, 226 Wis. 317, 276 N.W. 748 (1937).

[3] First Nat. Bank of Or. v. State Tax Commission, 244 Or. 28, 415 P.2d 744 (1966); Wisconsin Elec. Power Co. v. Wisconsin Dept. of Taxation, 251 Wis. 346, 29 N.W.2d 711 (1947).

[4] Vale v. DuPont, 37 Del. 254, 182 A. 668, 103 A.L.R. 946 (1936).

[5] Vale v. DuPont, 37 Del. 254, 182 A. 668, 103 A.L.R. 946 (1936).

[6] Blue Bell Creameries, LP v. Roberts, 333 S.W.3d 59 (Tenn. 2011), cert. denied, 131 S. Ct. 3068, 180 L. Ed. 2d 889 (2011).

[7] Blue Bell Creameries, LP v. Roberts, 333 S.W.3d 59 (Tenn. 2011), cert. denied, 131 S. Ct. 3068, 180 L. Ed. 2d 889 (2011).

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

§ 465. Worthless securities

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467, 3514

Some state income tax statutes provide that if any security that is a capital asset becomes worthless during the taxable year, the loss so resulting shall be treated as a loss from the sale or exchange of a capital asset.[1]

Footnotes

[1] Super Valu Stores, Inc. v. Commissioner of Taxation, 291 Minn. 169, 190 N.W.2d 67 (1971).

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

B. Recognition of Gain or Loss

§ 466. Involuntary conversions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467, 3513

Under some state income tax statutes, a taxpayer whose property has been involuntarily converted by condemnation may use the award or compensation from the condemnation to purchase similar property without having a taxable gain for income tax purposes within a certain period of time from the close of the first taxable year in which the gain was realized.[1] However, in order to claim the benefit pursuant to such a statute, the taxpayer is required to strictly comply therewith.[2] Thus, where a taxpayer closes title on a purchase of property after the specified time limit, but where the proposed purchase receives a conditional court approval within the time limit of the statute, the purchase is not within the terms of the statute.[3] Further, the requirements of such a statute are not met where the proceeds from a forced sale of vacant, improved farmland, originally purchased for speculative purposes, are reinvested for the production of rental income in urban properties that include structures suitable for various retail and wholesale establishments.[4]

In some jurisdictions, when the property of the taxpayer is taken by condemnation, the taxpayer is liable for capital gains tax on the excess of the payment for the property over its adjusted basis.[5]

Footnotes

1 Guaranty Bank & Trust Co. v. South Carolina Tax Commission, 254 S.C. 82, 173 S.E.2d 367 (1970).

2 Guaranty Bank & Trust Co. v. South Carolina Tax Commission, 254 S.C. 82, 173 S.E.2d 367 (1970).

3 Guaranty Bank & Trust Co. v. South Carolina Tax Commission, 254 S.C. 82, 173 S.E.2d 367 (1970).

4 Rogers v. Oklahoma Tax Commission, 1970 OK 11, 466 P.2d 650 (Okla. 1970).

[5] Wassom v. State Tax Commission, 241 Or. 388, 406 P.2d 151 (1965).

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XXVI. Gain or Loss on Disposition or Conversion of Property

C. Computation of Gain or Loss

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

A.L.R. Library

A.L.R. Index, Capital Gain or Loss
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A.L.R. Index, Taxes
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XXVI. Gain or Loss on Disposition or Conversion of Property

C. Computation of Gain or Loss

§ 467. Generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

Usually, the basis of property sold is, by statute, its value on the date when it is acquired.[1] Only genuine debt is included in the basis of property for tax purposes, and a property's basis is its fair market value.[2] The fair market price or value of property is usually the result of the opposing views of a willing seller not compelled to sell and a willing purchaser not required to buy.[3] Where property must be valued as of a past date, as when its value on that date is the basis for computing gain or loss on its subsequent disposition or conversion, its value as of that date must be determined in the light of the then known facts.[4] In its determination of the basis of property exchanged for purposes of determining the gain from the later sale of the new property, the court will look to real facts and not be confined to bookkeeping entries.[5]

Net gains or income from the disposition of property does not require using the taxpayer's federal adjusted basis to compute the gain.[6]

Footnotes

1 Bingham v. Long, 249 Mass. 79, 144 N.E. 77, 33 A.L.R. 809 (1924).

2 Miller v. Department of Revenue, State of Or., 327 Or. 129, 958 P.2d 833 (1998).

3 Vale v. DuPont, 37 Del. 254, 182 A. 668, 103 A.L.R. 946 (1936).

4 Vale v. DuPont, 37 Del. 254, 182 A. 668, 103 A.L.R. 946 (1936).

5 First Nat. Bank of Birmingham v. State, 262 Ala. 155, 77 So. 2d 653 (1954).

[6] Koch v. Director, Div. of Taxation, 157 N.J. 1, 722 A.2d 918 (1999).

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

C. Computation of Gain or Loss

§ 468. Exchange of property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3469

In states where there is no provision for the delay of the recognition of gain upon the exchange of property,[1] the taxpayer is liable for income tax on any gain achieved due to cash received in addition to the property received.[2]

Footnotes

1 As to exchanges of property, generally, see § 462.

2 Walter Alexander Co. v. Wisconsin Tax Commission, 215 Wis. 293, 254 N.W. 544 (1934); State v. Lee, 172 Wis. 381, 178 N.W. 471 (1920).

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Part Six. Income Taxes

XXVI. Gain or Loss on Disposition or Conversion of Property

C. Computation of Gain or Loss

§ 469. Property disposed of by trustee or executor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Taxation 3467 to 3469

Where there is a sale by executors during the settlement of an estate of intangible property owned by a testator at his or her death, the basis for ascertaining whether there has been a gain or loss is the value of such property at the time of the death of the testator and not its value at the time of its acquisition by him or her.[1]

Footnotes

[1] Bingham v. Long, 249 Mass. 79, 144 N.E. 77, 33 A.L.R. 809 (1924).

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Part Six. Income Taxes

XXVII. Place of Taxation

A. Income of Residents and Domestic Corporations

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3473 to 3476, 3482, 3483, 3508

A.L.R. Library

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Part Six. Income Taxes

XXVIII. Accounting Periods and Methods

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3538

A.L.R. Library

A.L.R. Index, Income Tax
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Part Six. Income Taxes

XXIX. Returns

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Pretrial Procedure 388

West's Key Number Digest, Taxation 3540, 3541

A.L.R. Library

A.L.R. Index, Income Tax
A.L.R. Index, Taxes
A.L.R. Index, Tax Returns
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West's A.L.R. Digest, Taxation 3540, 3541

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Part Six. Income Taxes

XXX. Assessment and Collection

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Taxation 3437, 3530, 3537, 3538, 3554, 3560 to 3563

A.L.R. Library

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A.L.R. Index, Tax Assessors and Collectors
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Part Six. Income Taxes

XXXI. Refunds

Topic Summary | Correlation Table

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Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 53, 198

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